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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

12 FAYE IRENE GUENTHER,
an individual,

13
14 Plaintiffs,

15 v.

16 JOSEPH H. EMMONS, individually,
AND OSPREY FIELD CONSULTING
LLC, a limited liability company,

17
18 Defendants.

No. 2:22-cv-00272-TOR

**DEFENDANTS' REPLY
STATEMENT OF MATERIAL
FACTS NOT IN DISPUTE IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

**December 5, 2024
With Oral Argument: 9:00 a.m.**

Pursuant to Local Civil Rule 56(c)(1)(C), Defendants submit this Reply Statement of Material Facts Not in Dispute. This Reply Statement incorporates Defendants' Statement of Material Facts Not in Dispute (ECF No. 111) and Plaintiff's Statement of Disputed Material Facts (ECF No. 116), and adds Defendants' reply to any paragraphs where Plaintiff has claimed facts are disputed or added new facts.

I. The Parties

A. Plaintiff Faye Guenther

1. Guenther is the President of United Food and Commercial Workers ("UFCW") Local 3000. Guenther I Tr. 28:4–8, 76:21–24; ECF No. 1-2 ¶ 1.2.

Response: Undisputed.

2. UFCW 3000 was formed through the merger of two UFCW locals, UFCW 21 and UFCW 1439. DiLorenzo Decl. Ex. I at 0000158.

Response: Undisputed.

3. Prior to the merger, Guenther was President of UFCW 21. Guenther I Tr. 20:6–21:8.

Response: Undisputed.

4. Guenther began working for UFCW 21 in 2008 and became President of UFCW 21 in May 2019. Guenther I Tr. 17:9–11, 20:6–8.

1 **Response:** Disputed in part. Guenther first started working for UFCW Local
2 21 in 1999 and returned to Local 21 in 2008 after graduating law school. ECF No.
3 107, ¶¶ 10, 14.

4 **Defendants' Reply:** Defendants do not dispute the additional facts Guenther
5 asserts in this paragraph.
6

7 **5.** As UFCW 21 President, Guenther supervised approximately 112
8 UFCW 21 staff members. Guenther I Tr. 37:12–21.

9 **Response:** Undisputed.
10

11 **B. Defendants Joseph Emmons and Osprey Field Services LLC**

12 **6.** Emmons and his company, Osprey Field Services LLC (“Osprey”),¹
13 provide community outreach services, which has included distributing clients’
14 informational materials for various campaigns. Declaration of Joseph H. Emmons in
15 Support of Defendants’ Motion for Summary Judgment (“Emmons Decl.”) ¶¶ 1–2;
16 Emmons Tr. 50:20–51:20.

17 **Response:** Undisputed.
18

19 **7.** The subject matter of the materials Osprey has been hired to distribute
20 have included, for example, ballot initiatives, public concerns, and recall elections.
21 Emmons Decl. ¶ 2; Emmons Tr. 50:20–51:20.
22

23 ¹ The Complaint incorrectly names “Osprey Field Consulting LLC.”

1 **Response:** Undisputed.

2
3 **8.** Osprey’s clients provide all written material Osprey distributes, and
4 Osprey does not create the written materials it distributes or participate in developing
5 the content of those materials. Emmons Decl. ¶ 3; Emmons Tr. 50:20–51:20.

6 **Response:** Disputed in part.

7 Between January 5 and 8, 2022, Emmons printed the flyers at issue in this
8 case at a FedEx store. ECF No. 106, Ex. 13 (Emmons Tr. 74:18–76:2). In that sense,
9 Emmons—which this Statement uses to refer collectively to Joseph Emmons and his
10 company, Osprey Field Services LLC—literally created the flyers he distributed at
11 grocery stores in Spokane, Washington.

12 It is undisputed that Emmons did not draft the content of the challenged flyers.

13 It is equally undisputed that Emmons knew the content of the flyers before
14 publishing them at Spokane stores, through a January 5, 2021, conversation he had
15 with Michael Selvaggio (Local 555’s contracted political director), a second
16 conversation Emmons had with Selvaggio sometime between January 5 and 8, and
17 because Emmons himself reviewed the flyer he received by email from Selvaggio
18 before printing and circulating it. ECF No. 105, ¶¶ 70, 72–73, 80, 82, 83, citing ECF
19 No. 106, Ex. 7 (Selvaggio Tr. 108:18–110:4, 109:23–110:4, 110:9–111:13, 117:8–
20 23, 139:9–140:1, 144:3–145:1); ECF No. 106, Ex. 13 (Emmons Tr. 69:7–14, 69:17–
21 70:14, 76:1–80:16, 78:25–79:15, 90:13–91:19); ECF No. 106, Ex. 17 (Selvaggio
22 Dep. Ex. 8); ECF No. 106, Ex. 18 (Selvaggio Dep. Ex. 6).

Defendants' Reply: Guenther's response stretches the meaning of "create."

She does not dispute that the Flyer existed weeks before Selvaggio hired Emmons to distribute it, and that Emmons merely "printed copies" of it. ECF No. 106 at 100–01 (Emmons Tr. 75:11–76:4). As discussed in Defendants' Reply, the fact that Emmons printed the copies of the Flyer he distributed has no legal significance.

With respect to the facts Guenther adds to this Paragraph, Emmons first learned of the Flyer on or around January 5, 2022—not 2021. *See* ECF No. 112 ¶¶ 7–8; ECF No. 122 ¶¶ 3–5. The remaining facts Guenther adds to this Paragraph are undisputed.

II. Complaint Letter Against Renner

9. On September 13, 2021, a letter of concern regarding the UFCW 1439 President, Eric Renner, was emailed to UFCW 1439 Executive Board Members and UFCW International Leadership. DiLorenzo Decl. ¶ 24 & Ex. W ("Complaint Letter"); Jackson Tr. 25:13–26:8, 99:13–16.

Response: Undisputed.

It is also undisputed that Guenther had not seen the August 23, 2021, letter of concern (which was forwarded on September 13, 2021, to the Local 1439 Executive Board and UFCW International President) before the March 11, 2024, deposition of Laurel Fish. Dalmat 2nd Decl. Ex. 32 (Guenther Tr. I 138:19–139:10). In fact, before March or April 2022, all Guenther knew about the matter was that an internal conflict within Local 1439 had been resolved to the satisfaction of the affected parties. She did not know the substance of the dispute and had not seen the resulting settlement

1 agreements. Dalmat 2nd Decl. Ex. 32 (Guenther Tr I. 80:9–82:25, 93:18–94:8); Ex.
2 34 (Guenther Tr. II 28:8–30:1).

3 **Defendants’ Reply:** The purported facts Guenther adds to this Paragraph are
4 disputed. Laurel Fish testified that Guenther likely had seen the Complaint Letter
5 before the merger given how broadly the letter was circulated and Guenther’s role
6 as president-to-be of the merged union. ECF No. 123-5 at 5–6 (Fish Tr. 90:18–
7 91:10). Guenther also knew that the “internal conflict” at UFCW 1439 involved
8 Renner, and that as a result of that conflict, Renner was prohibited from “directly
9 supervis[ing] any employees.” ECF No. 113-1 at 38–39, 41, 55–56 (Guenther I Tr.
10 93:12–94:20, 99:5–14, 167:21–168:9); ECF No. 113 ¶ 14 & ECF No. 113-13 at 2;
11 ECF No. 113-2 at 11–12 (Guenther II Tr. 49:20–50:4). On December 15 or 16,
12 2021, Guenther read the Flyer, which states Renner had faced “sexual harassment
13 charges.” *Infra* ¶ 63; ECF No. 113-1 at 40 (Guenther I Tr. 97:8–16); ECF No. 10-
14 1. And Fish further testified that, in December or January, she directly told Guenther
15 about Renner’s abusive conduct. ECF No. 123-5 at 3–4, 6 (Fish Tr. 87:7–88:16,
16 91:5–17).

17 Defendants discussed the Complaint Letter in their February 6, 2024, motion
18 to compel production of documents and attached a copy in support. ECF No. 35 at
19 3–4; ECF No. 36-1. Defendants then covered the Complaint Letter at length in
20 Adam Jackson’s deposition, which Guenther attended. ECF No. 113-6 at 3-4
21 (Jackson Tr. 25:13–26:8); ECF No. 51-4 (Jackson Tr. 54:11–55:14) (discussing
22 letter). Guenther’s assertion that she did not see the Complaint Letter until Fish’s
23 deposition, which was taken after Jackson’s, is thus disputed.

1 In any event, Guenther's added assertions are not material to Defendants'
2 summary judgment motion; even if they were true, Guenther still cannot prevail on
3 her claims against Emmons because she cannot show fault or damages.
4

5 **10.** The five-page Complaint Letter raised concerns about what it described
6 as Renner's "abuse of power" and provided examples of such abuses, including
7 instances where the letter stated Renner "commented repeatedly about female staff
8 members and International Union officers 'big butts,'" "encouraged male employees
9 to imagine a specific female employee engaged in sex acts," "bragged ... about
10 having [sexual] relationships with members," asked a male employee whether he
11 had "hit that yet" in reference to a female employee, and used "homophobic
12 language" to "mock[] [an employee's] mannerisms." DiLorenzo Decl. ¶ 24 & Ex.
13 W at 008003–07; Jackson Tr. 25:13–26:8; Fish Tr. 24:4–22; *see also* ECF No. 51-4
14 at 54:11–55:14 (behavior described in complaint letter constituted "sexual
15 harassment").

16 **Response:** Disputed in part.

17 It is undisputed that the August 23, 2021, complaint letter (ECF No. 113-23)
18 raised those allegations.

19 As for whether the allegations themselves are true, Renner denies them and
20 explains why they are false or taken out of context. Declaration of Eric Renner, ¶¶
21 6– 11. *See also* Dalmat 2nd Decl. Ex. 35 (Streepy Tr. 34:18–35:19). For her part,
22 when Guenther first read the letter in March 2024, she did not know which
23

1 allegations in the complaint letter may have been true or untrue. Dalmat 2nd Decl.
2 Ex. 32 (Guenther Tr. I 139:2–141:24).

3 **Defendants’ Reply:** The purported facts Guenther adds to this paragraph
4 have no relevance to the merits of her claims because the Flyer stated Guenther was
5 helping Renner hide from sexual harassment allegations, and Renner undisputedly
6 faced sexual harassment allegations.

7
8 **11.** The Complaint Letter was signed by seven individuals, who were then-
9 current and former employees of UFCW 1439: Adam Jackson (Organizing
10 Director), Laurel Fish (Organizer & Director of Strategic Campaigns), Katie Dugger
11 (Membership Services/Organizer), Sandra Huggins (former Benefits Director),
12 Leslie Cowin (former Membership Services/Administrative Assistant), Amy Poston
13 (former Office Assistant/Administrative Assistant), and Austin DePaolo (former
14 Organizer & Business Representative) (collectively “Complainants”). DiLorenzo
15 Decl. ¶ 24 & Ex. W at 008007; Jackson Tr. 25:13–26:8.

16 **Response:** Undisputed.

17
18 **12.** Between approximately September 22, 2021, and early October 2021,
19 Plaintiff’s counsel Aaron Streepy investigated the Complaint Letter’s claims and
20 drafted settlement agreements with nondisclosure provisions, which the
21 Complainants, Renner, UFCW 1439, and others signed. *See* ECF No. 51-2 at 006047
22 (September 15, 2021, email from Streepy stating he “anticipate[d] beginning”
23 meeting with Complainants the following Wednesday); ECF No. 51-3 at 006226

1 (October 4, 2021 email from Streepy with settlement agreements); ECF No. 51-1
2 (“NDAs”).

3 **Response:** Disputed in part.

4 It is undisputed that between approximately September 22, 2021, and October
5 9, 2021, Aaron Streepy investigated the August 23, 2021, complaint letter’s
6 allegations and drafted settlement agreements with nondisclosure provisions, which
7 the Complainants, Renner, UFCW 1439, and others signed.

8 It is disputed that Mr. Streepy did so in his capacity as Plaintiff’s counsel. In
9 fact, this litigation is the first and only matter in which Mr. Streepy has represented
10 Guenther personally. Dalmat 2nd Decl. Ex. 35 (Streepy Tr. 13:4–10). Local 1439
11 retained Mr. Streepy in mid-September 2021 to investigate the allegations of the
12 August 23, 2021, complaint letter. In his capacity as outside counsel to Local 1439,
13 he investigated those allegations and, along with Local 1439’s in-house counsel,
14 negotiated a settlement agreement between the Complainants, Mr. Renner, and third
15 parties. Dalmat 2nd Decl. Ex. 35 (Streepy Tr. 16:13–18:5, 18:24–19:3); ECF No.
16 57, ¶¶ 4–5. The settlement became final on October 9, 2021. ECF No. 57, ¶ 5. During
17 that time, Mr. Streepy did not share information or any details with Guenther
18 regarding the investigation, other than perhaps to inform her that he represented
19 Local 1439 in the matter. ECF No. 57, ¶ 7.

20 **Defendants’ Reply:** The purported facts Guenther adds to this paragraph are
21 not material to Defendants’ summary judgment motion because, even if they are
22 true, they do not relate to the statements in the Flyer.
23

1 **13.** The NDAs include the following provisions: “Renner shall resign his
2 position with UFCW 1439 effective April 1, 2022,” and “Renner agrees not to run
3 for UFCW 1439 office in the future.” *See, e.g.*, ECF No. 51-1 at 006001.

4 **Response:** It is undisputed that the NDAs include the quoted terms.

5 It is also undisputed that Renner is no longer the President of Local 1439, does
6 not hold any elected office with UFCW Local 3000 and has not done so at any time,
7 and has not ever run for any elected office within UFCW Local 3000. Rather, the
8 principal, elected officers of Local 3000 are its President Faye Guenther, its
9 Secretary-Treasurer Joe Mizrahi, and its Recorder Maria Milliron. Renner is
10 currently employed by Local 3000 in a non-elected, non-officer position as a
11 contract bargainer. His current title is Director for Eastern Washington, Northern
12 Idaho, and Northeastern Oregon. Dalmat 2nd Decl. Ex. 32 (Guenther Tr. I 85:17–
13 87:17, 199:10–14, 200:13–23); Guenther 2nd Decl. ¶¶ 5–6. He has also held the title
14 of Vice President but has never been a constitutional Vice President within the
15 meaning of UFCW Local 3000’s bylaws, in that he has never sat on Local 3000’s
16 Executive Board. Guenther 2nd Decl. Ex. 1. In short, Renner has never held a
17 position at Local 3000 with responsibilities for governing that local union, as he had
18 at Local 1439. He has also never supervised anyone at Local 3000. Guenther 2nd
19 Decl. ¶¶ 5–6.

20 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
21 asserts in this paragraph.
22
23

1 **III. The Merger Between UFCW 21 and UFCW 1439**

2 **A. Preliminary Discussions**

3 **14.** On or around September 30, 2021, Renner asked Guenther to consider
4 a merger between UFCW 21 and UFCW 1439. Guenther I Tr. 58:2–4, 59:19–25.

5 **Response:** Undisputed.

6
7 **15.** Guenther responded that she was interested in a merger. Guenther I Tr.
8 59:19–60:4.

9 **Response:** Clarified. During the September 30, 2021, call, Guenther did not
10 respond substantively to Renner’s suggestion that Local 21 and Local 1439 merge.
11 Rather, within a few weeks of his September 30, 2021, call, Guenther called Renner
12 to let him know she was open to exploring a merger between Local 21 and Local
13 1439. ECF No. 107, ¶ 90. Subject to that understanding, the assertion is undisputed.

14 **Defendants’ Reply:** The additional facts Guenther asserts in this paragraph
15 are disputed to the extent Guenther is claiming she first expressed interest in
16 “exploring a merger” “weeks” after the September 30, 2021, call. On September 30,
17 2021, Guenther and Renner were already exchanging text messages about arranging
18 a meeting in Spokane. ECF No. 113-12 at 33–34. Guenther offered to “come over
19 this weekend on Saturday fly home Sunday.” *Id.* at 34.

20
21 **16.** At the time, UFCW 1439 had approximately 7,800 members who were
22 primarily located in Eastern Washington. Guenther I Tr. 55:6–8, 61:6–8.

23 **Response:** Undisputed.

1 **17.** UFCW 21 had approximately 44,000 members who were primarily
2 located across Washington. Guenther I Tr. 55:6–12; 61:6–10.

3 **Response:** Undisputed.
4

5 **18.** Collectively UFCW 1439 and UFCW 21 represented workers in
6 industries such as grocery, health care, packing and processing, and retail, among
7 others. DiLorenzo Decl. Ex. K.

8 **Response:** Undisputed.
9

10 **19.** Before engaging in formal merger discussions, Guenther and Renner
11 needed permission from UFCW International to do so. Guenther I Tr. 62:22–63:3.

12 **Response:** Undisputed.
13

14 **20.** In October 2021, Guenther and Renner communicated regularly,
15 including by text message and by phone. DiLorenzo Decl. ¶ 13 & Ex. L at 30028–
16 32; Guenther II Tr. 30:16–31:16, 34:18–38:24.

17 **Response:** Undisputed.
18

19 **21.** On October 20, 2021, Renner sent Guenther a text message about
20 reaching out to Kate Meckler. DiLorenzo Decl. ¶ 13 & Ex. L at 30030; Guenther II
21 Tr. 30:16– 31:7, 36:3–11.

22 **Response:** Undisputed.
23

1 **22.** Kate Meckler was a UFCW regional director. Guenther I Tr. 124:23–
2 25, 158:13–14; Guenther II Tr. 36:3–11.

3 **Response:** Undisputed. *See also* ECF No. 105, ¶ 5.
4

5 **23.** Meckler needed to “release” the merger request before UFCW
6 International would approve formal merger discussions, and Guenther was
7 concerned that Meckler would oppose the merger. Guenther I Tr. 161:24–162:9;
8 Guenther II Tr. 36:20–25.

9 **Response:** Undisputed and clarified.

10 Although the UFCW Constitution authorizes the International Executive
11 Committee to approve formal merger discussions, Regional Director Meckler is the
12 person who communicated that approval (or “released” it) to the local unions who
13 had requested it. ECF No. 107, ¶¶ 92, 94.

14 It is undisputed that, although International President Marc Perrone had
15 informally approved the merger discussion as early as November 2, 2021, Meckler
16 delayed communicating the International’s formal approval until December 2021 to
17 avoid interfering with a union-election vote at a Fred Meyer store in Richland,
18 Washington, scheduled for late November 2021. ECF No. 107, ¶¶ 92, 97; ECF No.
19 113-1 (Guenther Tr. I 161:24–162:9).

20 It is undisputed that Guenther was concerned Meckler would oppose the
21 merger. ECF No. 113-2 (Guenther Tr. II 36:20–25). Meckler, after all, had
22 previously allied with Local 555 President Dan Clay (and others) against Guenther
23

1 on various matters. ECF No. 107, ¶¶ 20–22, 27, 30–31, 63–65, 71, 92; ECF No.
2 106, Ex. 2 (UFCW-EMMONS_000899–901).

3 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
4 asserts in this paragraph.

6 **24.** On October 20, 2021, Guenther responded to Renner, stating in part:

7 I think we should meet with Aaron first and then maybe call her that
8 day? That way we have all our best arguments written down and vetted
[...]

9 Kate may try to mess with things...hopefully not...so maybe we can ask
10 Aaron to draft up top 10 reasons or something. And then specifically
ask for her support.

11 And we should have a letter ready to go asap after we talk with her to
12 full exec committee.

13 DiLorenzo Decl. ¶ 13 & Ex. L at 30029–30; Guenther II Tr. 30:16–31:7, 36:3–25.

14 **Response:** Undisputed that the quotations set forth above are partial
15 quotations of text messages Guenther sent Renner on October 20, 2021. The full
16 quotations are set forth in the cited exhibit.

18 **25.** On October 21, 2021, Plaintiff’s counsel Jim McGuinness emailed
19 Guenther an example of a letter seeking UFCW International’s approval for formal
20 merger discussions in another proposed merger. ECF No. 48-11 at 006016, 006015.
21 McGuinness’s cover email stated in part, “Obviously, we could beef it up for this
22 situation with all the reasons a merger makes sense.” *Id.* at 006016.

23 **Response:** Disputed in part.

1 It is undisputed that Jim McGuinness emailed Guenther an example of a letter
2 seeking UFCW International's approval for formal merger discussions in another
3 proposed merger.

4 It is disputed that Mr. McGuinness did so in his capacity as Guenther's lawyer.
5 In fact, Mr. McGuinness represented Local 21, not Guenther personally. Dalmat 2nd
6 Decl. Ex. 32 (Guenther Tr. I 154:21–155:24).

7 **Defendants' Reply:** Defendants do not dispute the additional facts Guenther
8 asserts in this paragraph.

9
10 **26.** Also on October 21, 2021, Guenther emailed Renner an example
11 "Union Merger Agreement" that McGuinness had provided to her. ECF No. 48-12
12 at 006014, 006011–13.

13 **Response:** Undisputed.

14
15 **27.** On October 27, 2021, Guenther, Renner, Streepy, and Joe Mizrahi
16 (UFCW 21's Secretary-Treasurer) met and drafted a letter to UFCW International
17 requesting permission to engage in formal merger discussions, which Guenther and
18 Renner signed. Guenther I Tr. 60:11–20, 65:6–67:13, 157:19–158:1; DiLorenzo
19 Decl. ¶ 15 & Ex. N.

20 **Response:** Undisputed.

1 **28.** Guenther then hand delivered the letter to Kate Meckler, who reports
2 to UFCW International President Marc Perrone. Guenther I Tr. 157:19–159:4;
3 DiLorenzo Decl. ¶ 15 & Ex. N.

4 **Response:** Undisputed.
5

6 **29.** On October 30, 2021, Guenther texted Renner, “I have meeting set with
7 Perrone,” and Renner responded: “Great news, work your magic!” DiLorenzo Decl.
8 ¶ 13 & Ex. L at 030029, 030028; Guenther II Tr. 30:16–31:7.

9 **Response:** Undisputed.
10

11 **30.** On November 2, 2021, Guenther met in person with UFCW
12 International’s president, Marc Perrone, at a meeting arranged by Guenther.
13 DiLorenzo Decl. Ex. O; Guenther I Tr. 67:20–25.

14 **Response:** Undisputed.
15

16 **31.** At the November 2, 2021 meeting, Guenther sought Perrone’s support
17 for the merger. Guenther I Tr. 62:22–63:3, 67:14–25, 159:5–13.

18 **Response:** Undisputed.

19 It is also undisputed that, at the November 2, 2021, meeting, Perrone
20 informally verbally pledged his support for the merger. ECF No. 107, ¶ 94; Dalmat
21 Decl. Ex. 32 (Guenther Tr. I 68:1–9).

22 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
23 asserts in this paragraph.

1 **32.** Guenther also asked Shaun Barclay, UFCW 21's former regional
2 director, to speak with Perrone about the benefits of the merger. Guenther I Tr.
3 163:3–24.

4 **Response:** Disputed in part. Shaun Barclay is a former regional director of
5 UFCW Region 7, of which Local 21 was a part. *See* ECF No. 105, ¶ 5 (citing record).
6 The remainder of this Paragraph is undisputed.

7 **Defendants' Reply:** Defendants do not dispute the additional facts Guenther
8 asserts in this paragraph.
9

10 **B. Formal Merger Discussions & Executive Board Approval**

11 **33.** On December 2, 2021, UFCW International gave its approval for
12 UFCW 21 and UFCW 1439 to engage in formal merger discussions. Guenther I Tr.
13 161:20– 162:22; DiLorenzo Decl. ¶ 7 & Ex. P.

14 **Response:** Undisputed.
15

16 **34.** Guenther helped prepare a merger agreement, which Guenther and
17 Renner signed. Guenther I Tr. 69:19–70:19; DiLorenzo Decl. Ex. I.

18 **Response:** Undisputed and clarified that Guenther did so using the
19 International Union's Model Local Union Merger Agreement, which required
20 membership approval. *See* ECF No. 113-1 (Guenther Tr. I 69:19–70:19); ECF No.
21 107, ¶ 95; and Ex. 16.

22 **Defendants' Reply:** Defendants do not dispute the additional facts Guenther
23 asserts in this paragraph.

1 **35.** Under the merger agreement, Guenther would be president of the new
2 union formed through the merger. DiLorenzo Decl. Ex. I.

3 **Response:** Undisputed.
4

5 **36.** Under a “side agreement,” Renner would be an employee of the new
6 union. DiLorenzo Decl. ¶ 14 & Ex. M at 001027; Guenther I Tr. 84:7–25; Guenther
7 II Tr. 43:2–25, 49:20–50:4.

8 **Response:** Disputed in part.

9 It is undisputed that UFCW 3000 entered into a “Merger Commitments and
10 Employment Agreement” that provided Renner would be an employee of Local
11 3000.

12 It is disputed that Local 3000 did so contemporaneously with its execution of
13 the December 14, 2021, merger agreement (ECF No. 113-9). In fact, Local 3000
14 never signed the “Merger Commitments and Employment Agreement” but instead
15 approved it electronically much later, by July 21, 2023. *See* ECF No. 113-13; Dalmat
16 2nd Decl. 32 (Guenther Tr. I 84:7–25); 34 (Guenther Tr. II 43:2–25, 49:20–50:4).

17 **Defendants’ Reply:** The purported facts Guenther adds to this Paragraph are
18 disputed to the extent they imply Guenther had not agreed by December 14, 2021,
19 that UFCW 3000 would employ Renner. Guenther produced in discovery an email
20 that attached a draft of the employment agreement dated December 10, 2021. ECF
21 No. 48-13 at 2 (file name “ERIC RENNER EMPLOYMENT AGREEMENT (12-
22 10-21).docx”). And Guenther testified that before the December 14, 2021, UFCW
23

1 21 Executive Board meeting, she had planned that Renner “would have ongoing
2 employment with the new local.” ECF No. 113-1 at 37 (Guenther I Tr. 84:7–12).

3
4 **37.** Before Guenther recommended the proposed merger to UFCW 21’s
5 Executive Board, Guenther and Renner agreed that the new union would employ
6 Renner. Guenther I Tr. 84:7–25.

7 **Response:** Disputed in part.

8 It is undisputed that before Guenther recommended to the Local 21 Executive
9 Board that the Board put the merger to a membership vote, she had asked Renner to
10 work with Local 3000 “to help transition the [Local 1439] contracts to” Local 3000.
11 Dalmat 2nd Decl. Ex 32 (Guenther Tr. I 84:7–16). At that time, the parties had not
12 reached any agreements—their “conversations were vague” Dalmat 2nd Decl.
13 Ex 32 (Guenther Tr. I 84:19). An actual agreement between Renner and Local 3000
14 regarding his employment did not begin to take shape until January or February 2022
15 and was not executed until much later, by July 21, 2023. Dalmat 2nd Decl. Ex 32
16 (Guenther Tr. I 84:17–25); Ex 34 (Guenther Tr. II 43:2–25, 49:20–50:4).

17 **Defendants’ Reply:** Guenther’s assertion that the “agreement between
18 Renner and Local 3000 regarding his employment did not begin to take shape until
19 January or February 2022” is disputed. Guenther produced in discovery an email
20 that attached a draft of the employment agreement dated December 10, 2021. ECF
21 No. 48-13 at 2 (file name “ERIC RENNER EMPLOYMENT AGREEMENT (12-
22 10-21).docx”).

1 **38.** On December 8, 2021, Renner stated in a text message to Guenther:
2 “Scott H. has reviewed merger agreement. Larry Hall supports the merger and will
3 put his name to it. Train is rolling!!!!” DiLorenzo Decl. ¶ 13 & Ex. L at 30025;
4 Guenther II Tr. 30:16–31:7. Guenther responded: “Yes!!!! That is so awesome!” *Id.*

5 **Response:** Undisputed.

6 It is also undisputed that “Scott H.” refers to Scott Habenicht, Local 1439’s in-
7 house counsel in December 2021 and Larry Hall is a former President of Local 1439
8 who was a significant leader of that union. Guenther 2nd Decl. ¶ 6.

9 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
10 asserts in this paragraph.

11
12 **39.** On December 12, 2021, Renner told Guenther that two individuals
13 “were both very impressed by [her] and are in full support!” DiLorenzo Decl. ¶ 13
14 & Ex. L at 30022; Guenther II Tr. 30:16–31:7. Guenther responded: “That is great
15 news! Now I have to get my board all in order!” *Id.*

16 **Response:** Undisputed and clarified that Renner texted Guenther that Jeff
17 White and Kinzie Michael—two members of the Local 1439 Executive Board in
18 December 2021—were “both very impressed by [Guenther] and are in full support!”
19 Guenther 2nd Decl. ¶ 9.

20 Guenther’s response to Renner’s text is undisputed.

21 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
22 asserts in this paragraph.

1 **40.** On December 14, 2021, Guenther led a discussion with the UFCW 21
2 Executive Board, in which she advocated in favor of the merger. Guenther I Tr.
3 60:24–62:12; DiLorenzo Decl. Ex. Q at 006002–03.

4 **Response:** Disputed in part.

5 On December 14, 2021, the Local 21 Executive Board discussed the merger.
6 But Joe Mizrahi led the discussion (in executive session) and Guenther fielded
7 questions. ECF No. 107, ¶¶ 97–100.

8 It is also undisputed that Local 21’s Executive Board was composed of 36
9 members and the merger discussion took place during an executive session, which
10 is reserved for sensitive, private discussions. ECF No. 107, ¶¶ 97–101; and Ex. 17
11 (RFP Resp No 6 – 006001–03).

12 **Defendants’ Reply:** Guenther does not dispute that at the December 14,
13 2021, UFCW 21 Executive Board meeting, “she advocated in favor of the merger,”
14 and that is the material fact.

15
16 **41.** On December 14, 2021, the UFCW 21 Executive Board approved the
17 proposed merger. Guenther I Tr. 61:19–21, 97:19–25.

18 **Response:** Undisputed, in the sense that the Local 21 Executive Board
19 recommended putting the merger question to a vote of its members for approval.
20 ECF No. 107, ¶¶ 97–101. The Executive Board did not have authority, on its own,
21 to “approve” the proposed merger. ECF No. 107, ¶¶ 91, 102.

22 **Defendants’ Reply:** Regardless of whether the UFCW 21 Executive Board
23 “recommended” the proposed merger or “approved” it, the Board’s recommendation

1 or approval was necessary for the merger to proceed. ECF No. 107 at 94 (Ex. 16,
 2 procedures for mergers between UFCW local unions); *see also* ECF No. 1-2 ¶ 3.6
 3 (“UFCW 21’s executive board met and approved a motion to recommend the merger
 4 to the membership of the local.”).

5
 6 **42.** The UFCW 1439 Executive Board also approved the proposed merger
 7 on the same day. *Id.*

8 **Response:** Undisputed, in the sense that the Local 1439 Executive Board
 9 recommended putting the merger question to a vote of its members for approval.
 10 ECF No. 107, ¶¶ 97–101. The Executive Board did not have authority, on its own,
 11 to “approve” the proposed merger. ECF No. 107, ¶¶ 91, 102.

12 **Defendants’ Reply:** Regardless of whether the UFCW 1439 Executive
 13 Board “recommended” the proposed merger or “approved” it, the Board’s
 14 recommendation or approval was necessary for the merger to proceed. ECF No. 107
 15 at 94 (Ex. 16, procedures for mergers between UFCW local unions); *see also* ECF
 16 No. 1-2 ¶ 3.5 (“UFCW 1439’s executive board met and approved a motion to
 17 recommend the merger to the membership of the local.”).

18
 19 **43.** When Guenther spoke with the UFCW 21 Executive Board on
 20 December 14, 2021, Guenther knew “there ... had been an internal conflict [at
 21 UFCW 1439]” involving Renner that “had been resolved amongst all parties with
 22 nondisclosure and ... confidentiality agreements,” and that Renner was prohibited
 23 from “directly supervis[ing] any employees.” Guenther I Tr. 71:13–18, 93:12–

1 94:20, 99:5–14, 167:21–168:9; DiLorenzo Decl. ¶ 14 & Ex. M at 001027; Guenther
2 II Tr. 49:20– 50:4; DiLorenzo Decl. Ex. Q at 006002–03.

3 **Response:** Undisputed.
4

5 **44.** Guenther did not tell the UFCW 21 Executive Board about the claims
6 against Renner, the nondisclosure agreements, Renner’s agreement to resign, or that
7 Renner was not allowed to supervise people. Guenther I Tr. 83:6–84:6.

8 **Response:** Disputed in part.

9 As of the December 14, 2021, Local 21 Executive Board meeting, Guenther
10 did not know the claims against Renner, had not seen the settlement/nondisclosure
11 agreements, and had contemplated a merger agreement that would place Renner in
12 a non-supervisory position at Local 3000 where he would not be an officer of that
13 local union and would not sit on its governing body, the Executive Board. Dalmat
14 2nd Decl. Ex. 32 (Guenther Tr. I 80:9–82:25, 85:17–87:17, 93:18–94:8, 138:19–
15 139:10, 199:10–14, 200:13–23); Ex. 34 (Guenther Tr. II 28:8–30:1); Guenther 2nd
16 Decl. ¶¶ 5–6.

17 It is therefore undisputed that Guenther did not inform the Local 21 Executive
18 Board of those topics of which she was unaware. As for the restriction on Renner’s
19 ability to supervise others, because Guenther had no expectation that Renner would
20 supervise anyone at Local 3000, she saw no relevance in informing the Executive
21 Board of such a restriction. Dalmat 2nd Decl. Ex. 32 (Guenther Tr. I 84:3–6). In fact,
22 Renner has not supervised anyone while employed at Local 3000. Guenther 2nd
23 Decl. ¶¶ 5–6.

Defendants' Reply: Guenther does not dispute that she did not tell the UFCW 21 Executive Board about the claims against Renner, the nondisclosure agreements, Renner's agreement to resign, or that Renner was not allowed to supervise people. To the extent she asserts she could not have told the Board this information, the evidence does not support her assertion. She knew that complaints against Renner by UFCW 1439 staff had been settled. ECF No. 113-1 at 38–39 (Guenther I Tr. 93:12–94:20); ECF No. 123-1 at 3–6 (Guenther I Tr. 71:13–74:2). She knew that those settlement agreements existed and that they contained nondisclosure provisions. ECF No. 123-1 at 3 (Guenther I Tr. 71:13–25). And she knew that, as a result of the complaints, Renner could not continue to serve as president, or in any officer position, and was prohibited from supervising union employees. ECF No. 113-1 at 41, 55–56 (Guenther I Tr. 99:5–12, 167:21–168:9). Indeed, Guenther testified that she did not share this information with the Board because she “didn’t think it was relevant.” ECF No. 113-1 at 36–37 (Guenther I Tr. 83:6–84:6).

C. Member Vote

45. On December 17, 2021, UFCW 1439 formally announced the merger vote to its members. DiLorenzo Decl. Ex. X at 0000168.

Response: Disputed in part (or, perhaps, merely clarified).

The cited exhibit indicates that “Notice of the merger vote was provided to our membership on December 17, 2021.” ECF No. 113-24. In other words, on December 17, 2021, Local 1439 mailed notifications to its members of their right to participate in an upcoming vote—at meetings on January 6, 10–14, and 18–20, 2022—on the

1 proposed merger between Local 21 and Local 1439. ECF No. 113-24. Local 1439's
2 December 17, 2021, notice did not announce the results of an accomplished merger
3 vote.

4 **Defendants' Reply:** Defendants do not dispute the additional facts Guenther
5 asserts in this paragraph.

6
7 **46.** On January 6, 2022, UFCW 21 formally announced the merger vote to
8 its members. DiLorenzo Decl. Ex. Y at 0000151.

9 **Response:** Disputed in part (or, perhaps, merely clarified).

10 The cited exhibit indicates that "Notice of the merger vote was provided to
11 our membership on January 6, 2022." ECF No. 113-25. That, in fact happened. *See*
12 ECF No. 107, ¶ 103 and Ex. 18. Local 21's notice did not ask anyone to vote in favor
13 of the merger. *Id.*

14 In other words, on January 6, 2022, Local 21 mailed its members of their right
15 to participate in general membership meetings on February 9–12, 2022, during
16 which the merger would be one of the topics discussed and on which they could
17 vote. ECF No. 113-24. Local 21's January 6, 2022, notice did not announce the
18 results of an accomplished merger vote.

19 **Defendants' Reply:** Defendants do not dispute the additional facts Guenther
20 asserts in this paragraph. Although the formal notice issued on January 6, 2022, did
21 not ask anyone to vote in favor of the merger, a prior press release on UFCW 21's
22 website did. *See* ECF No. 10-19; *infra* ¶ 92.

1 47. Between January 6 and 20, 2022, UFCW 1439 members voted on the
2 proposed merger. DiLorenzo Decl. Ex. X at 000168; Guenther I Tr. 97:19–25.

3 **Response:** Undisputed.
4

5 48. On January 5, 2022, the day before UFCW 1439 members began
6 voting, Guenther stated in an email to Renner and others that her staff “are going to
7 fly to Spokane tomorrow and provide any support needed to 1439,” “onboard [a
8 UFCW 21 staff member] to help from tomorrow until January 20 to ensure we have
9 what we need for all votes,” and “can also help ... with anything ... including ... vote
10 support.” DiLorenzo Decl. Ex. R.

11 **Response:** Disputed in part.

12 It is undisputed that the quotations set forth above are accurate, partial
13 quotations from the cited exhibit containing Guenther’s January 5, 2022, email. The
14 full quotation is:

15 Hi All:

16 Kim and Sarah are going to fly to Spokane tomorrow and provide any
17 support needed to 1439. We have a staff person who is cross trained in
18 Emma and DMC and Kim will onboard her to help from tomorrow until
19 January 20 to ensure we have what we need for all votes. Kim and
20 Michelle can also help Dana with anything she needs including prep for
21 year end audit and vote support.

22 Joe and I are cancelling all of our travel and meetings and will provide
23 extra support, Shari Davis will likely travel with us to any vote meetings
we can make. Share can help reps with sign in and she can seal the
doors at proper time.

Eric I will call you so we can outline which votes Share/Joe and I can provide extra sets of hands.

It's game time!

Faye

ECF No. 113-18. This email correctly reflects Guenther's plans as of January 5, 2022: she planned to send experienced Local 21 staff members to assist with Local 1439's administration of the merger vote to ensure compliance with legal requirements under federal law (i.e., the Labor-Management Reporting and Disclosure Act) and the UFCW Constitution. Guenther 2nd Decl. ¶ 12. In fact, Guenther was not able to attend the Local 1439 meetings at which Local 1439 members voted on the merger because she was sick with COVID. Guenther 2nd Decl. ¶¶ 14–15. The Local 21 staff who attended ensured the merger vote complied with union-constitutional requirements and federal law, and also fielded members' questions. Guenther 2nd Decl. ¶¶ 16–17.

Defendants' Reply: Defendants do not dispute the additional facts Guenther asserts in this paragraph.

49. In the same January 5, 2022, email, Guenther stated: "Joe and I are cancelling all of our travel and meetings and will provide extra support, Shari Davis will likely travel with us to any vote meetings we can make. ... Eric I will call you so we can outline which votes Shari/Joe and I can provide extra sets of hands. It's game time!" *Id.*

Response: Disputed in part.

1 It is undisputed that the quotations set forth above are accurate, partial
2 quotations from the cited exhibit containing Guenther's January 5, 2022, email. The
3 full quotation is:

4 Hi All:

5 Kim and Sarah are going to fly to Spokane tomorrow and provide any
6 support needed to 1439. We have a staff person who is cross trained in
7 Emma and DMC and Kim will onboard her to help from tomorrow until
8 January 20 to ensure we have what we need for all votes. Kim and
Michelle can also help Dana with anything she needs including prep for
year end audit and vote support.

9 Joe and I are cancelling all of our travel and meetings and will provide
10 extra support, Shari Davis will likely travel with us to any vote meetings
we can make. Share can help reps with sign in and she can seal the
doors at proper time.

11 Eric I will call you so we can outline which votes Share/Joe and I can
12 provide extra sets of hands.

13 It's game time!

14 Faye

15 ECF No. 113-18. This email correctly reflects Guenther's plans as of January 5,
16 2022: she planned to send experienced Local 21 staff members to assist with Local
17 1439's administration of the merger vote to ensure compliance with legal
18 requirements under federal law (i.e., the Labor-Management Reporting and
19 Disclosure Act) and the UFCW Constitution. Guenther 2nd Decl. ¶ 12. In fact,
20 Guenther was not able to attend the Local 1439 meetings at which Local 1439
21 members voted on the merger because she was sick with COVID. Guenther 2nd
22 Decl. ¶¶ 14-15. The Local 21 staff who attended ensured the merger vote complied
23

1 with union-constitutional requirements and federal law, and also fielded members'
2 questions. Guenther 2nd Decl. ¶¶ 16–17.

3 **Defendants' Reply:** Defendants do not dispute the additional facts Guenther
4 asserts in this paragraph.

5
6 **50.** Also on January 5, 2022, Guenther texted Renner: “Game time!!! Its
7 [sic] on Eric! I can t [sic] wait to celebrate on Jan 20!!!!!!!!!!” DiLorenzo Decl. ¶ 13
8 & Ex. L at 30017; Guenther II Tr. 30:16–31:7.

9 **Response:** Undisputed.

10
11 **51.** UFCW 1439 members voted in favor of the merger, 191 to 5.
12 DiLorenzo Decl. Ex. X at 000168.

13 **Response:** Undisputed.

14 It is also undisputed that the 196 votes cast out of approximately 7,800
15 members of Local 1439—i.e., only approximately 2.5% of the Local 1439
16 membership participated in the merger vote. The vote was also uncontroversial, with
17 approximately 97.4% of Local 1439 voters supporting the merger.

18 **Defendants' Reply:** Defendants do not dispute that 2.5% of UFCW 1439
19 members participated in the merger vote, or that 97.4% of those members who voted
20 cast votes in favor of the merger. But Defendants disagree with Guenther's
21 characterization of the vote as “uncontroversial.” Guenther alleges that UFCW 21
22 and UFCW 1439 staff members discussed the Flyer's allegations with members in
23 advance of the merger vote. ECF No. 1-2 ¶¶ 3.27, 3.59–3.61. UFCW members

1 discussed the merger in a Facebook forum. ECF No. 113-1 at 41–43 (Guenther I Tr.
2 99:22–101:13); ECF No. 106 at 87–88; ECF No. 1-2 ¶ 3.12. Laurel Fish (one of
3 only a few individuals who knew the truth behind the merger) thought that allowing
4 Renner to continue working for the union through the merger “violated” “the spirit
5 and intent and language” of the settlement agreements—and she told Guenther so.
6 ECF No. 123-5 at 3 (Fish Tr. 87:7–24); *see also supra* ¶ 23 (“undisputed” that
7 Guenther was concerned UFCW Regional Director Kate Meckler would oppose the
8 merger).

9
10 **52.** On January 27, 2022, Guenther stated in an email to Renner and others:
11 “UFCW 21 members will be voting soon, and hopefully that will be a good vote.”
12 DiLorenzo Decl. Ex. S.

13 **Response:** Undisputed.

14 It is also undisputed that the personnel copied on Guenther’s email are all
15 senior Local 21 staff. Guenther 2nd Decl. ¶¶ 13, 16–17; ECF No. 113-19.

16 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
17 asserts in this paragraph.

18
19 **53.** Between February 9 and 12, 2022, UFCW 21 members voted on the
20 proposed merger. DiLorenzo Decl. Ex. Y at 0000151.

21 **Response:** Undisputed.

1 **54.** UFCW 21 members voted in favor of the merger, 207 to 11. DiLorenzo
2 Decl. Ex. Y at 0000151.

3 **Response:** Undisputed.

4 It is also undisputed that the 218 votes cast for or against the merger out of
5 approximately 44,000 members of Local 21 mean that only approximately 0.5% of
6 Local 21 members participated in the merger vote. The vote was uncontroversial,
7 with approximately 95% of Local 21 voters supporting the merger.

8 It is also undisputed that, taken together, only 414 out of approximately
9 51,800 members of both local unions participated in the merger vote. In other words,
10 only approximately 0.8% of eligible voters participated in the merger vote.

11 **Defendants’ Reply:** Defendants do not dispute that 0.5% of UFCW 21
12 members participated in the merger vote, or that 95% of those members who voted
13 cast votes in favor of the merger. But Defendants disagree with Guenther’s
14 characterization of the vote as “uncontroversial.” Guenther alleges that UFCW 21
15 and UFCW 1439 staff members discussed the Flyer’s allegations with members in
16 advance of the merger vote. ECF No. 1-2 ¶¶ 3.27, 3.59-61. UFCW members
17 discussed the merger in a Facebook forum. ECF No. 113-1 at 41–43 (Guenther I Tr.
18 99:22–101:13); ECF No. 106 at 87–88; ECF No. 1-2 ¶ 3.12. Laurel Fish (one of
19 only a few individuals who knew the truth behind the merger) thought that allowing
20 Eric to continue working for the union through the merger “violated” “the spirit and
21 intent and language” of the settlement agreements—and she told Guenther so. ECF
22 No. 123-5 at 3 (Fish Tr. 87:7-24); *see also supra* ¶ 23 (“undisputed” that Guenther
23 was concerned UFCW Regional Director Kate Meckler would oppose the merger).

1 **55.** In Spokane, only one UFCW 1439 member voted against the merger,
2 and all UFCW 21 members in Spokane voted in favor of the merger. DiLorenzo
3 Decl. Ex. X at 0000172 & Ex. Y at 0000152.

4 **Response:** Undisputed.

5
6 **56.** The merger became effective March 1, 2022. DiLorenzo Decl. Ex. I at
7 0000158.

8 **Response:** Undisputed.

9
10 **IV. The Flyer**

11 **A. Nonparty Michael Selvaggio Created the Flyer.**

12 **57.** In December 2021, Michael Selvaggio, who through his company
13 Ridgelark Strategies LLC was political director for UFCW 555, created a flyer to
14 encourage UFCW members to vote against the proposed merger. Selvaggio Tr.
15 62:2–23, 75:14–19, 113:10–18; see ECF No. 26-1 (“Flyer”).

16 **Response:** Disputed in part.

17 It is undisputed that Selvaggio drafted the content of the flyer based on talking
18 points he had discussed with Local 555 President Dan Clay and his executive
19 assistant, Esai Alday. ECF No. 106, Ex. 7 (Selvaggio Tr. 113:10–114:3, 122:17–
20 124:12, 144:3–145:1).

21 Nonetheless, Emmons literally created the written materials—the flyers—that
22 he distributed at grocery stores in Spokane, Washington, by printing them at a FedEx
23 store. ECF No. 106, Ex. 13 (Emmons Tr. 74:18–76:2).

1 **Defendants' Reply:** Guenther's response stretches the meaning of "create."

2 She does not dispute that Selvaggio made the Flyer. Nor does she dispute that the
3 Flyer existed weeks before Selvaggio hired Emmons to distribute it, and Emmons
4 merely "printed copies" of it. *See* ECF No. 106 at 100–01 (Emmons Tr. 75:11-76:4).
5 As discussed in Defendants' Reply, the fact that Emmons printed the copies of the
6 Flyer he distributed has no legal significance.

7
8 **58.** Selvaggio created the Flyer at the request of Dan Clay, President of
9 UFCW 555. Selvaggio Tr. 43:23–25, 92:10–97:24; 123:20–124:2.

10 **Response:** It is undisputed that Selvaggio drafted the flyer at Clay's request.
11 As indicated in response to paragraph 57, Emmons literally created the flyers
12 themselves by printing them.

13 **Defendants' Reply:** Again, Guenther stretches the meaning of "create." She
14 does not dispute that Selvaggio made the Flyer. Nor does she dispute that the Flyer
15 existed weeks before Selvaggio hired Emmons to distribute it, and Emmons merely
16 "printed copies" of it. *See* ECF No. 106 at 100–01 (Emmons Tr. 75:11-76:4). As
17 discussed in Defendants' Reply, the fact that Emmons printed the copies of the Flyer
18 he distributed has no legal significance.

19 **59.** Clay and Esai Alday, who also works for UFCW 555, provided
20 Selvaggio with the information that Selvaggio included in the Flyer. Selvaggio Tr.
21 99:11–17, 122:10–124:2. 60.

22 **Response:** Undisputed.
23

1 **60.** The Flyer contained the following statements:

2 ATTENTION UFCW MEMBERS

3 The in-union “Sexual Harassment club” is at it again!!

4 First Faye Gunther [sic] (President of Local 21) helped former 367
5 President Angel Gonzalez cover up his harassment charges and paid
6 him off in exchange for installing her puppet, Mike Hines.

7 Now she’s helping Eric Renner (the Local 1439 President) hide from
8 sexual harassment charges and land a cushy new gig with Local 21
9 through a forced merger.

10 OUR UNION SHOULD BE LOOKING OUT FOR US
11 NOT PROTECTING HARASSERS!

12 It’s time to STOP THE COVERUPS!

13 VOTE NO ON ANY MERGER!

14 ECF No. 26-1.

15 **Response:** Undisputed. *See also* ECF No. 106, Ex. 17.

16 **61.** Emmons had “[n]o” “involvement in the creation or production of the
17 [Flyer].” Emmons Tr. 73:13–15.

18 **Response:** Disputed.

19 In fact, Emmons was substantially involved in producing the flyer. He
20 discussed the contents of the flyer with Selvaggio before agreeing to print and
21 circulate it. ECF No. 106, Ex. 7 (Selvaggio Tr. 110:9–111:13); Ex. 13 (Emmons Tr.
22 69:7–14). During that discussion, Emmons immediately recognized the incendiary
23 nature of those accusations and asked Selvaggio for their basis. ECF No. 106, Ex.
24 13 (Emmons Tr. 69:7–10, 70:20–71:22). Selvaggio told him the sexual harassment

1 allegations were the subject of investigations. ECF No. 106, Ex. 13 (Emmons Tr.
2 70:20–71:22); Ex. 7 (Selvaggio Tr. 110:24–111:16). Selvaggio and Emmons did not
3 discuss any payoffs or whether Guenther was involved in any way in those
4 allegations or the target of any sexual harassment investigation. ECF No. 106, Ex. 7
5 (Selvaggio Tr. 111:14–112:19); Ex. 13 (Emmons Tr. 71:20–25, 78:2–7, 78:22–79:8,
6 80:3–12). As far as Emmons recalls, they did not discuss Guenther at all during that
7 conversation. ECF No. 106, Ex. 13 (Emmons Tr. 64:21–65:15).

8 After that conversation, Selvaggio emailed Emmons the flyer. ECF No. 106,
9 Ex. 17 (Selvaggio Ex. 8); Dalmat Decl. Ex. 7 (Selvaggio Tr. 139:9–140:1, 144:3–
10 145:1). After receiving a copy of the flyer itself from Selvaggio, Emmons and
11 Selvaggio had another discussion about it. ECF No. 106, Ex. 13 (Emmons Tr. 76:1–
12 80:16); Ex. 18 (Selvaggio Ex. 6). During that second conversation, Emmons read
13 the flyer in its entirety but did not discuss any details of any investigations into
14 Gonzalez or Renner and did not discuss the accusation that Guenther helped
15 Gonzalez cover up harassment charges and paid him off in exchange for installing
16 Hines. ECF No. 106, Ex. 13 (Emmons Tr. 78:25–79:15, 90:13–91:19). Emmons
17 also did not discuss with Selvaggio the accusation that Guenther helped cover up
18 allegations Renner was facing. ECF No. 16, Ex. 13 (Emmons Tr. 78:14–80:16).

19 Based on what he learned in these two conversations—i.e., nothing at all
20 supporting the truth of the accusations directed against Guenther—Emmons agreed
21 to produce the flyers by printing them at a FedEx store and then distributing them in
22 grocery stores in Spokane (hundreds of miles away from Portland) where affected
23 UFCW members would likely see them. ECF No. 106, Ex. 13 (Emmons Tr. 74:18–

75:25); Ex. 13 (Emmons Tr. 74:18–76:6, 81:1–84:22, 102:9–103:21); Ex. 7 (Selvaggio Tr. 136:3–19); Ex. 19 (RFP Resp No. 2 – 002111–16). Upon distributing the flyers, Emmons told recipients “here’s information about the union, information about the merger.” ECF No. Ex. 7 (Selvaggio Tr. 118:8–18).

Defendants’ Reply: Guenther attempts to create a factual dispute here, but none exists. She does not dispute that Selvaggio made the Flyer and mailed it to 1,000 people weeks before he hired Emmons to distribute it. Nor does she dispute that at Selvaggio’s direction, Emmons only “printed copies” and distributed them. ECF No. 106 at 100–01 (Emmons Tr. 75:11–76:4); *see also supra* ¶¶ 57–59; *infra* ¶¶ 62, 79–80, 85. She also concedes that she saw the Flyer before Emmons ever learned of it. *See infra* ¶ 63 (Guenther first saw the Flyer December 15 or 16, 2021); *infra* ¶ 79 (Emmons first saw the Flyer on January 5, 2022). Thus, Emmons could not have been “substantially involved in producing the flyer,” as Guenther claims. And, as discussed in Defendants’ Reply, the fact that Emmons printed the copies of the Flyer he distributed has no legal significance.

Several of Guenther’s other assertions similarly stretch the record:

First, Emmons did not see the Flyer as “incendiary.” The testimony Guenther cites simply states Emmons asked Selvaggio whether the Flyer’s statements were credible. The only evidence in the record concerning Emmons’s state of mind indicates he believed the Flyer was true and would inform UFCW members of union leaders’ misconduct. *See* ECF No. 112 ¶¶ 5–9; ECF No. 113-4 at 10–11 (Emmons Tr. 108:19–109:10); ECF No. 106 at 95 (Emmons Tr. 69:17–21).

1 Second, Guenther’s claim that Emmons and Selvaggio “did not discuss”
2 Guenther or specific statements in the Flyer is misleading. Emmons and Selvaggio
3 both testified that they discussed all of the Flyer’s statements, including those
4 concerning Guenther, and Selvaggio confirmed they were true and supported by
5 investigations. ECF No. 106 at 51–52 (Selvaggio Tr. 110:9–111:22); ECF No. 106
6 at 101–05 (Emmons Tr. 76:7–80:12); ECF No. 112 ¶ 9. Emmons also testified that
7 he could not specifically recall everything he and Selvaggio discussed concerning
8 the Flyer. *See, e.g.*, ECF No. 106 at 96–97 (Emmons Tr. 70:11–14, 71:18–25).

9 Third, Guenther’s claim that Emmons did not “learn[]” “[any]thing at all
10 supporting the truth of the accusations” is false. As Emmons and Selvaggio have
11 testified, Selvaggio told Emmons that the Flyer’s statements were true and supported
12 by investigations. ECF No. 123-3 at 8–9 (Selvaggio Tr. 110:9–111:22); ECF No.
13 112 ¶ 9; ECF No. 113-4 at 10–11 (Emmons Tr. 108:19–109:10); ECF No. 106 at
14 103–05 (Emmons Tr. 78:8–80:12). Emmons also learned that the Flyer was part of
15 a project to educate UFCW members about union leaders’ misconduct. ECF No.
16 106 at 96–97 (Emmons Tr. 70:17–71:12). This information helped inform
17 Emmons’s view that the Flyer was true because, in his experience working with
18 Selvaggio, Selvaggio “does not take on initiatives without first confirming that the
19 position or message he is communicating is a credible one.” ECF No. 112 ¶¶ 6, 9.

20 Finally, Selvaggio selected the location and stores where Emmons distributed
21 the Flyer—not Emmons. ECF No. 106 at 105–06 (Emmons Tr. 80:25–81:5); ECF
22 No. 112 ¶ 8.

B. Nonparty Mike Selvaggio Mailed 1,000 Copies of the Flyer to UFCW Worksites on December 13, 2021.

62. On December 13, 2021, Selvaggio mailed 1,000 copies of the Flyer to UFCW work sites across Washington. Selvaggio Tr. 97:11–98:10, 101:4–102:12, 104:17– 105:3, 113:22–114:1.

Response: Undisputed. It is also undisputed that the mailings were addressed to shop stewards and store managers. ECF No. 107, ¶ 117.

Defendants’ Reply: Defendants do not dispute the additional facts Guenther asserts in this paragraph.

63. Guenther first learned of the Flyer on December 15 or 16, 2021. Guenther I Tr. 97:8–16.

Response: Undisputed. *See also* ECF No. 107, ¶ 128; and Ex. 22.

64. Around the same time, a UFCW 367 member posted the Flyer in a UFCW member Facebook forum, and other members commented on it. ECF No. 1-2 ¶ 3.12; DiLorenzo Decl. Ex. T; Guenther I Tr. 99:15–101:22.

Response: Undisputed and clarified. It is undisputed that the Facebook group in which the member posted the flyer was closed to members of Local 367, and that the post garnered merely 26 comments and 17 reactions. Guenther 2nd Decl. ¶¶ 18–19; ECF No. 106, Ex. 11 (RFP Resp. No. 2 – 002099); Ex. 4 (Guenther Tr. 99:22–100:18). Because each Facebook user can make only one reaction to a post, whereas the same user can post multiple comments responding to a post, the 26 comments

1 could be from the 17 people who posted reactions. Guenther 2nd Decl. ¶¶ 18–20;
2 ECF No. 106, Ex. 11 (RFP Resp. No. 2 – 002099).

3 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
4 asserts in this paragraph.

5
6 **65.** Adam Jackson received a text message from a grocery store meat
7 manager with an image of the Flyer, which the meat manager said he had received
8 at work. Jackson Tr. 122:6–18.

9 **Response:** Undisputed.
10

11 **66.** Jackson shared the image of the Flyer with Laurel Fish on or around
12 December 16, 2021. Fish Tr. 112:14–25.

13 **Response:** Undisputed.
14

15 **67.** Jackson “checked with a few other people” to see if they had received
16 the Flyer and confirmed others had received it too. Jackson Tr. 122:16–18.

17 **Response:** Undisputed.

18 It is also undisputed that the members with whom Jackson discussed the flyer
19 were “confused more than anything” by it. Dalmat 2nd. Decl. Ex. 36 (Jackson Tr.
20 123:2–4). The members were already aware “there was a vote coming up” because
21 the union had “already announced the merger was coming.” Dalmat 2nd. Decl. Ex.
22 36 (Jackson Tr. 123:6–8). Jackson told the members, “It’s nothing, you know, we
23 did or our Local put out and so I just reported it to Scott.” Dalmat 2nd. Decl. Ex. 36

1 (Jackson Tr. 123:11–12). At no point before the membership meetings at which the
2 merger votes occurred, however, did Jackson report hearing Local 1439 members
3 debate the merits of the merger publicly, including following the December 2021
4 mailing. *Id.*

5 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
6 asserts in this paragraph.

7
8 **68.** Guenther testified that she experienced “[a]nxiety” after the Flyer
9 became public. Guenther I Tr. 107:12–24.

10 **Response:** It is undisputed that Guenther experienced anxiety and pecuniary
11 harm as a result of the flyer Emmons circulated. *See* ECF No. 107, ¶¶ 136–167.

12 The testimony cited at Guenther I Tr. 107:12–24 does not indicate that
13 Guenther’s anxiety began before January 8, 2022, when Emmons circulated the
14 flyers in Spoke stores.

15 **Defendants’ Reply:** Guenther asserts that “[i]t is undisputed that Guenther
16 experienced anxiety and pecuniary harm as a result of the flyer Emmons circulated.”
17 Defendants argued in their Motion for Summary Judgment that Guenther lacks
18 “special damages”—i.e., economic or pecuniary loss—as the record showed none.
19 *See, e.g.,* ECF No. 110 at 24–25. And Defendants further argued that Guenther
20 lacked evidence showing any purported damages resulted from Emmons’s conduct.
21 *Id.* These facts have not changed.

22 **No pecuniary harm.** The only evidence Guenther cites now to show pecuniary
23 harm is her own self-serving declaration, submitted with her summary judgment

1 motion. *See* ECF No. 107. That declaration claims three purported pecuniary
2 losses—money spent on “professional care” for her anxiety, costs incurred from
3 moving her personal residence, and lost income from not being appointed as a
4 UFCW International Vice President. *Id.* ¶¶ 164, 167. None of these supposed harms
5 was alleged in the Complaint. ECF No. 21 at 11 (finding Guenther made “no
6 allegations on special damages”). Nor did Guenther identify any of them in her
7 Initial Disclosures. ECF No. 48-3 at 12–13 (asserting Guenther’s damages are
8 “reputational” and “non-economic,” and therefore “do not require computation”).
9 Rule 37(c)(1) thus bars her from relying on them now. *See* Fed. R. Civ. P. 37(c)(1)
10 (party who “fails to provide information ... as required by Rule 26(a)” cannot use
11 that information “on a motion ... or at a trial”); *Okeke v. N.Y. & Presbyterian Hosp.*,
12 2017 WL 2484200, at *3 (S.D.N.Y. June 6, 2017) (“A plaintiff’s failure to disclose
13 a computation of damages in her initial disclosure is alone sufficient to preclude her
14 from submitting evidence of it at trial.”) (citation & internal quotation marks
15 omitted).

16 No evidence of causation. Guenther cites no evidence supporting her
17 assertion that Emmons’s conduct caused either her anxiety or her newly asserted
18 pecuniary damages. She notes that her testimony does not specify the date when her
19 anxiety started, but as the plaintiff, she has the burden of establishing factual
20 causation—i.e., that her anxiety began *after* January 8, 2022, and was caused by the
21 copies of the Flyer that Emmons distributed. ECF No. 110 at 24-25; *see also* ECF
22 No. 120 at 25-26. The record contains no such evidence of factual causation, and in
23 fact demonstrates that Guenther’s anxiety and any resulting losses resulted from

1 other events that had nothing to do with the Flyer. *See, e.g.*, ECF No. 121 ¶¶ 106-
2 109.

3
4 **69.** On or around December 16, 2021, after Fish learned of the Flyer from
5 Jackson, Plaintiff’s counsel Aaron Streepy called Fish “to ask if [she] was
6 responsible for [the Flyer].” Fish Tr. 94:1–11.

7 **Response:** Undisputed.

8
9 **70.** On December 20, 2021, Guenther received an email with the subject
10 line “In-union Sexual Harassment Club?” from Lance Van Landuyt, who signed as
11 “Steward at Fred Meyer” and asked, “This letter was mailed to me at my store.
12 What’s this all about?” DiLorenzo Decl. Ex. U. Guenther responded in part: “Our
13 attorneys are working on this We will work until we find out who wrote the flyer
14 and who mailed the flyer to attempt to get to the bottom of this.” *Id.*

15 **Response:** Undisputed.

16 It is also undisputed that the record contains no evidence showing Mr. Van
17 Landuyt discussed the matter publicly.

18 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
19 asserts in this paragraph.

C. Nonparty Mike Selvaggio Hired Emmons to Place Copies of the Flyer in Five to Seven Grocery Stores in Spokane, Which Emmons Did on January 8, 2022.

71. In January 2022, Selvaggio called Emmons and said Ridgelark wanted to hire Emmons's company, Osprey, to distribute copies of the Flyer to grocery stores in Spokane. Selvaggio Tr. 73:14–17; Emmons Tr. 67:13–68:25, 73:8–12, 84:12–13; Emmons Decl. ¶¶ 4, 7, 10.

Response: Undisputed and clarified.

The call occurred on or around January 5, 2022. ECF No. 106, Ex. 7 (Selvaggio Tr. 108:18–110:4).

Defendants' Reply: Defendants do not dispute the additional facts Guenther asserts in this paragraph.

72. Emmons and Osprey had been hired by Selvaggio and Ridgelark to assist with numerous community outreach projects before. Emmons Decl. ¶ 5.

Response: Undisputed.

73. Emmons first worked with Selvaggio at an organization called Direct Action Partners, where Selvaggio was President and Emmons was a Project Manager, before the organization dissolved. *Id.*

Response: Undisputed.

74. Since working together at Direct Action Partners, Selvaggio, through Ridgelark, has hired Emmons, through Osprey, for numerous other community outreach projects over the years. *Id.*

Response: Undisputed.

1 **75.** Emmons has known Selvaggio for nearly a decade. *Id.*

2 **Response:** Undisputed.

3
4 **76.** In Emmons’s experience working for Selvaggio, Emmons has observed
5 Selvaggio to be honest and trustworthy. Emmons Tr. 109:1–10; Emmons Decl. ¶ 6.

6 **Response:** Disputed in part. It is undisputed that Emmons testified as much.
7 The cited deposition testimony includes Emmons’s testimony that Selvaggio has
8 “never led [Emmons] astray.” ECF No. 113-4 (Emmons Tr. 109:6–8). The pendency
9 of this litigation speaks for itself on that question.

10 **Defendants’ Reply:** Guenther’s added commentary on this paragraph has no
11 relevance to the merits of her claims. The fault element—under either the actual
12 malice or negligence standard—turns on what Emmons knew at the time he
13 distributed the Flyer. *See* ECF No. 110 at 21–24.

14
15 **77.** Specifically, in Emmons’s experience, Selvaggio is selective in the
16 organizations and people he chooses to work for, only works for those with high
17 integrity, and does not take on initiatives without first confirming that the position
18 or message he is communicating is a credible one. Emmons Decl. ¶ 6.

19 **Response:** Disputed.

20 The facts of this case—with which Emmons has experience—show that
21 Selvaggio does not work only for people with high integrity and he does take on
22 initiatives without confirming the position or message he is communicating is
23 credible. Rather, the record facts show Selvaggio took on Operation Wagon Wheel

1 in reliance on the representations of Clay and Alday, who told him that they relied
2 on an investigation by the UFCW International Union—an assertion Selvaggio did
3 nothing to verify. ECF No. 106, Ex. 7 (Selvaggio. Tr. 111:23–112:19). In fact, the
4 International repeatedly deemed the flyers’ accusations to be false. ECF No. 106,
5 Ex. 14 (UFCW-EMMONS_000029 –32), Ex. 15 (UFCW-EMMONS_000936), Ex.
6 16 (UFCW-EMMONS_000937).

7 In addition, neither Selvaggio nor Emmons did anything to confirm whether
8 Guenther paid off Local 367 President Angel Gonzalez or whether Guenther was
9 involved in any way in the allegations of sexual harassment against Gonzalez or
10 against Eric Renner. ECF No. 106, Ex. 7 (Selvaggio Tr. 111:14–112:19); Ex. 13
11 (Emmons Tr. 71:20–25, 78:2–7, 78:22–79:8, 80:3–12). They did not discuss
12 Guenther at all—let alone confirm the facts of the accusations against her—when
13 discussing this position. ECF No. 106, Ex. 13 (Emmons Tr. 64:21–65:15).

14 It is also disputed that Clay—the president of UFCW Local 555, which
15 contracts Selvaggio through his company, Ridgelark Strategies—is a person of high
16 integrity. For example, when asked by International Union investigators about his
17 involvement in the flyer at issue in this case, he knowingly lied about it—denying
18 any involvement. ECF No. 106, Ex. 15.

19 **Defendants’ Reply:** Guenther does not dispute that at the time Emmons
20 circulated the Flyer, in his experience, Selvaggio was selective in the organizations
21 and people he chose to work for, only worked for those with high integrity, and did
22 not take on initiatives without first confirming that the position or message he was
23 communicating was a credible one. Guenther’s added commentary regarding her

1 views of Selvaggio and Clay—all based on events that occurred *after* Emmons
2 distributed the Flyer—has no relevance to the merits of her claims. The fault element
3 turns on what Emmons knew and believed at the time he distributed the Flyer, not
4 what he may or may not know now. *See* ECF No. 110 at 21–24.

5 Further, Guenther’s assertions that Emmons did not do “anything” to
6 “confirm” whether the Flyer’s statements were true and “did not discuss Guenther
7 at all” are false and misleading. Selvaggio and Emmons both testified that Emmons
8 discussed all of the Flyer’s statements, including those concerning Guenther, with
9 Selvaggio, and Selvaggio confirmed they were true and supported by investigations
10 that “involved Ms. Guenther.” ECF No. 106 at 51–52 (Selvaggio Tr. 110:9–111:22);
11 ECF No. 106 at 101–05 (Emmons Tr. 76:7–80:12); ECF No. 112 ¶ 9. The testimony
12 Guenther cites simply indicates that Emmons did not investigate the Flyer’s
13 statements beyond his conversations with Selvaggio.

14
15 **78.** Emmons agreed to take on the project of distributing copies of the Flyer
16 in Spokane. Emmons Decl. ¶ 7.

17 **Response:** Undisputed. *See also* ECF No. 105, ¶¶ 70–84 (citing record).

18 **79.** Selvaggio emailed Emmons the Flyer on January 5, 2022. Emmons
19 Decl. ¶ 8.

20 **Response:** Undisputed.

21
22 **80.** Selvaggio provided Emmons with a list of grocery stores where
23 Selvaggio wanted Emmons to distribute the Flyer. Emmons Decl. ¶ 8.

1 **Response:** Undisputed.

2
3 **81.** Emmons does not personally know the individuals named in the Flyer.
4 Emmons Decl. ¶ 9.

5 **Response:** Undisputed.

6
7 **82.** Emmons had no personal knowledge as to the truth of the statements in
8 the Flyer. Emmons Decl. ¶ 9; Emmons Tr. 108:23–109:10; Selvaggio Tr. 110:18–
9 23.

10 **Response:** It is undisputed that Emmons had no actual knowledge of the truth
11 of the statements in the flyer he published. Nor could he have, as the flyers’
12 statements are false. *See* ECF No. 105, ¶¶ 95–105 (citing record).

13 To the extent this Paragraph implies Emmons had no actual malice when
14 publishing the flyer’s accusations against Guenther, Guenther disputes that
15 implication with the following circumstantial evidence. *See Duc Tan v. Le*, 177
16 Wn.2d 649, 669, 300 P.3d 356 (2013).

17 In fact, Emmons had personal hostility toward anyone accused of sexual
18 harassment—which was a “personal issue” for him—such that, once Emmons heard
19 the flyer involved sexual harassment that could affect “UFCW members” he “really
20 didn’t need to hear much more” to spread the accusations in the flyer, even though
21 he immediately recognized that the accusations were incendiary. ECF No. 106, Ex.
22 13 (Emmons Tr. 69:7–10, 70:5–7, 70:11–16).

1 Emmons knew that Selvaggio, Clay, and Alday—Emmon’s direct and
2 indirect sources of information—were hostile to Guenther, as the express purpose
3 of the flyering project, as Selvaggio conveyed it to him, was to oppose the merger
4 that Guenther sought. ECF No. 106, Ex. 7 (Selvaggio Tr. 109:23–110:4, 117:8–23);
5 Ex. 13 (Emmons Tr. 69:17–70:14).

6 Emmons did nothing to investigate the allegations against Guenther, let alone
7 do so properly. ECF No. 106, Ex. 7 (Selvaggio Tr. 111:14–112:19); Ex. 13
8 (Emmons Tr. 64:21–65:15, 71:20–25, 73:8–23, 78:2–7, 78:22–79:8, 80:3–12).
9 Emmons also did not inquire into any details of any investigations into Gonzalez or
10 Renner. ECF No. 106, Ex. 13 (Emmons Tr. 78:25–79:15, 90:13–91:19).

11 And, finally, Emmons deliberately avoided the truth, not even inquiring into
12 the basis for the accusations against Guenther despite inquiring into the basis for the
13 accusations against the alleged harassers. ECF No. 106, Ex. 7 (Selvaggio Tr.
14 111:14–112:19); Ex. 13 (Emmons Tr. 64:21–65:15, 71:20–25, 73:8–23, 78:2–7,
15 78:22–79:8, 80:3–12).

16 **Defendants’ Reply:** Guenther’s response to this paragraph largely consists of
17 improper legal argument that does not bear on the asserted fact—that Emmons
18 lacked personal knowledge as to the truth of the Flyer’s statements—which
19 Guenther concedes is undisputed. The purported facts Guenther adds lack support
20 in the record.

21 First, Guenther misrepresents Emmons’s deposition testimony. Emmons did
22 not view the Flyer as “incendiary” and did not hold “personal hostility” toward
23 sexual harassers. Nor does the record show that any supposed hostility influenced

1 his decision to take on Selvaggio's project. Guenther's counsel asked Emmons,
 2 "How did [Selvaggio] describe the project?" ECF No. 106 at 95 (Emmons Tr. 69:7–
 3 10). Emmons responded: "That there were individuals who previously had sexual
 4 harassment allegations against them attempting to come back into leadership, which
 5 is a personal issue for me." *Id.* Guenther's counsel did not explore what Emmons
 6 meant by "personal issue," nor did Emmons say anything further about it. Nine
 7 questions later, Guenther's counsel asked, "What else did [Selvaggio] tell you about
 8 the project?" *Id.* at 96 (Emmons Tr. 70:11–14). Emmons responded: "I can't recall,
 9 but I really didn't need to hear much more." *Id.*

10 As Emmons has repeatedly testified, he was satisfied with the information
 11 Selvaggio provided because Selvaggio said the Flyer was true, supported by
 12 investigations, and intended to inform UFCW members about their leaders'
 13 misconduct, and Emmons trusted Selvaggio's word. ECF No. 112 ¶¶ 5–9; ECF No.
 14 106 at 103–05 (Emmons Tr. 78:8–80:12); ECF No. 113-4 at 10–11 (Emmons Tr.
 15 108:19–109:10). Emmons had worked for Selvaggio for years and had personally
 16 observed that Selvaggio worked only for clients with high integrity and promoted
 17 only messages he confirmed to be credible. ECF No. 112 ¶¶ 5–6. Thus, Emmons
 18 had no reason to question Selvaggio's representations, and genuinely believed the
 19 Flyer was true. *Id.* ¶¶ 5–9. None of the testimony Guenther cites indicates
 20 otherwise.

21 Second, no evidence supports Guenther's assertion that Emmons knew of Clay
 22 and Alday's involvement, or knew Selvaggio, Clay, and Alday were "hostile"
 23 toward her. Selvaggio testified that (i) he told Emmons that he, Selvaggio, had been

1 told the Flyer's statements were true, and (ii) Clay and Esai were the individuals
2 who told Selvaggio the Flyer's statements were true. ECF No. 106 at 51–52
3 (Selvaggio Tr. 110:18–111:5). But Selvaggio did not tell Emmons that Clay and
4 Esai were the ones who confirmed the Flyer's accuracy, or that they were involved
5 in the Flyer at all. *See* ECF No. 122 ¶ 8; ECF No. 106 at 98–99 (Emmons Tr. 73:24–
6 74:1) (“Q: And did Mr. Selvaggio indicate whether he was asked to distribute the
7 flier by any other person or entity? A: No.”). Indeed, Emmons testified that he did
8 not know Selvaggio was working for UFCW 555 at the time. ECF No. 113-4 at 5–
9 6 (Emmons Tr. 67:23–68:17). Nor is there any evidence that Emmons knew of the
10 supposed conflicts between Clay and Guenther. And nothing in the record shows
11 that Selvaggio was “hostile” to Guenther—he had never even met her. ECF No. 40-
12 2 at 6 (Selvaggio Tr. 91:8–11).

13 Guenther asserts Emmons must have known the Flyer's authors were “hostile”
14 toward her because the Flyer's purpose “was to oppose the merger.” But Selvaggio
15 told Emmons the Flyer's purpose was to provide UFCW members with
16 “information.” ECF No. 106 at 50–51 (Selvaggio Tr. 109:21–110:4); *accord* ECF
17 No. 106 at 95–97 (Emmons Tr. 69:17–21, 70:17–71:12) (Emmons would “be
18 distributing fliers at grocery stores to educate membership”). Wanting to provide
19 union members with information, and even to encourage them to vote against the
20 merger, does not equate to hostility toward any particular individual.

21 Third, Defendants dispute Guenther's assertion that “Emmons did nothing to
22 investigate the allegations against [her]” and “deliberately avoided the truth.” As
23 both Selvaggio and Emmons have testified, Emmons asked Selvaggio whether the

1 Flyer's statements were accurate. ECF No. 123-3 at 8–9 (Selvaggio Tr. 110:9–
2 111:2); ECF No. 106 at 96–97 (Emmons Tr. 70:17–71:17); ECF No. 112 ¶ 9.
3 Selvaggio confirmed they were and stated they were supported by investigations.
4 ECF No. 123-3 at 8–9 (Selvaggio Tr. 110:9–111:22); ECF No. 112 ¶ 9; ECF No.
5 106 at 103–05 (Emmons Tr. 78:8–80:12); ECF No. 113-4 at 10–11 (Emmons Tr.
6 108:19–109:10). For the reasons above, this information satisfied Emmons that he
7 was distributing credible information.
8

9 **83.** Emmons asked Selvaggio whether the Flyer's statements were
10 accurate. Emmons Decl. ¶ 9; Selvaggio Tr. 110:18–111:2.

11 **Response:** Disputed.

12 During their initial conversation on the matter, Emmons asked Selvaggio
13 “about the credibility of the accusations and involvement of individuals in the
14 Spokane region.” ECF No. 106, Ex. 13 (Emmons Tr. 70:20–21). They did not
15 discuss the allegations against Guenther or Renner. ECF No. 106, Ex. 13 (Emmons
16 Tr. 71:20–25).

17 Emmons had a second conversation about the matter shortly thereafter. During
18 that conversation, Emmons and Selvaggio discussed the statement “The in-union
19 ‘Sexual Harassment Club’ is at it again” and specifically discussed sexual
20 harassment allegations and related investigations, without discussing any details of
21 those investigations. ECF No. 106, Ex. 13 (Emmons Tr. 78:2–21).

22 As to the statement “First Faye Guenther (President of Local 21) helped
23 former 367 President Angel Gonzalez cover up his harassment charges and paid

1 him off in exchange for installing her puppet, Mike Hines,” Selvaggio said nothing
 2 other than the generality that there had been investigations. ECF No. 106, Ex. 13
 3 (Emmons Tr. 78:25–79:10). Specifically, Selvaggio did not say anything to explain
 4 why the flyer alleged Guenther paid Angel Gonzalez off. ECF No. 106, Ex. 13
 5 (Emmons Tr. 79:11–15). *Accord* ECF No. 106, Ex. 7 (Selvaggio Tr. 111:17–22)
 6 (Selvaggio did not tell Emmons “that Ms. Guenther was the target of the
 7 investigation”). In fact, Selvaggio and Emmons did not discuss Guenther at all. ECF
 8 No. 106, Ex. 13 (Emmons Tr. 64:21–65:15).

9 As to the statement “Now she’s helping Eric Renner (the Local 1439
 10 President) hide from sexual harassment charges and land a cushy new gig with
 11 Local 21 through a forced merger,” Selvaggio said nothing to Emmons about that
 12 portion of the flyer or any remaining portion of the flyer. ECF No. 106, Ex. 13
 13 (Emmons Tr. 79:16–80:16).

14 **Defendants’ Reply:** Guenther claims the asserted fact—that Emmons asked
 15 Selvaggio whether the Flyer’s statements were accurate—is disputed, but nothing
 16 she cites controverts it. Although Guenther parses Emmons’s deposition testimony
 17 to try to fit her narrative, his testimony as a whole (and his declaration) show that
 18 Emmons asked Selvaggio about the Flyer’s credibility, the two read through the
 19 Flyer’s statements, and Selvaggio confirmed the statements were true. ECF No. 106
 20 at 96 (Emmons Tr. 70:17–23) (Q: “Did you make any inquiries of him regarding the
 21 project? A: Yes. Q: What did you say? A: I asked him about the credibility of the
 22 accusations”); *id.* at 102 (Emmons Tr. 77:1–21) (“Like I said, we read through
 23 it when he had emailed it over to me.”); *id.* at 103 (Emmons Tr. 78:8–13) (“We read

over the flier, and [Selvaggio] said that there had been investigations.”); *id.* at 104–05 (Emmons Tr. 79:25–80:2) (“Q: Did he say anything to you about the remaining portions of the flier? A: No. Again, we read through it.”); ECF No. 112 ¶ 9.

Selvaggio’s testimony confirms this too. *See* ECF No. 113-3 at 19–20 (Selvaggio Tr. 110:18–111:2) (“Q: Did he express an interest in, like, finding out whether the information was true or what the basis for the allegations were? A: Yes, he indicated that – or I should say, he asked me, ‘Is this – is this good information? Is this solid?’ And I said yes.”).

The testimony Guenther cites does not change this fact. For example, Guenther’s counsel asked Emmons whether Selvaggio told him “anything specifically about the allegations against Mr. Renner” or “anything specific about the allegations regarding Ms. Guenther.” ECF No. 106 at 97 (Emmons Tr. 71:20–71:25). Emmons responded “no” and “I can’t recall specifically.” *Id.* But, given Emmons’s other testimony, that does not show Emmons and Selvaggio “did not discuss the allegations against Guenther or Renner” at all, as Guenther claims. It simply shows they did not discuss specific information about the Flyer’s allegations beyond reading them and confirming they were true and supported by investigations. *See also supra* ¶¶ 61, 77, 82; *infra* ¶ 84.

84. Selvaggio confirmed to Emmons that the Flyer’s statements were credible and stated that there had been investigations. Emmons Decl. ¶ 9; Emmons Tr. 78:11–21, 108:23–109:10; Selvaggio Tr. 110:18–111:9.

Response: Disputed in part.

1 It is undisputed that Emmons and Selvaggio discussed the statement “The in-
2 union ‘Sexual Harassment Club’ is at it again” and specifically discussed sexual
3 harassment allegations and related investigations, without discussing any details of
4 those investigations. ECF No. 106, Ex. 13 (Emmons Tr. 78:2–21).

5 As to the statement “First Faye Guenther (President of Local 21) helped
6 former 367 President Angel Gonzalez cover up his harassment charges and paid
7 him off in exchange for installing her puppet, Mike Hines,” Selvaggio said nothing
8 other than the generality that there had been investigations. ECF No. 106, Ex. 13
9 (Emmons Tr. 78:25–79:10). Specifically, Selvaggio did not say anything to explain
10 why the flyer alleged Guenther paid Angel Gonzalez off. ECF No. 106, Ex. 13
11 (Emmons Tr. 79:11–15). *Accord* ECF No. 106, Ex. 7 (Selvaggio Tr. 111:17–22)
12 (Selvaggio did not tell Emmons “that Ms. Guenther was the target of the
13 investigation”). In fact, Selvaggio and Emmons did not discuss Guenther at all. ECF
14 No. 106, Ex. 13 (Emmons Tr. 64:21–65:15).

15 As to the statement “Now she’s helping Eric Renner (the Local 1439
16 President) hide from sexual harassment charges and land a cushy new gig with
17 Local 21 through a forced merger,” Selvaggio said nothing to Emmons about that
18 portion of the flyer or any remaining portion of the flyer. ECF No. 106, Ex. 13
19 (Emmons Tr. 79:16–80:16).

20 **Defendants’ Reply:** Again, Guenther parses Emmons’s testimony in an
21 attempt to create a fact issue where there is none. Emmons testified that he read
22 through the entire Flyer with Selvaggio, and that Selvaggio confirmed the statements
23 were true and supported by investigations. ECF No. 106 at 101–05 (Emmons Tr.

1 76:7–80:12) (repeatedly stating Emmons and Selvaggio “read” the Flyer together);
2 ECF No. 113-4 at 10–11 (Emmons Tr. 108:19–109:10); ECF No. 112 ¶ 9; *accord*
3 ECF No. 123-3 at 8–9 (Selvaggio Tr. 110:9–111:22). The testimony Guenther cites
4 simply shows that Emmons did not ask for further details about the statements or the
5 investigations that supported them. Thus, her assertions that “Selvaggio and
6 Emmons did not discuss Guenther at all,” and that “Selvaggio said nothing to
7 Emmons” about certain portions of the Flyer, contradict the record.

8
9 **85.** On January 8, 2022, Emmons placed copies of the Flyer at five to seven
10 grocery stores in Spokane, leaving six to eight copies at each store. Emmons Decl.
11 ¶ 10; Emmons Tr. 84:12–13.

12 **Response:** Undisputed.

13
14 **86.** At the time Emmons distributed the Flyer, based on Emmons’s
15 experience with Selvaggio and Selvaggio’s representations concerning the Flyer,
16 Emmons believed that the Flyer’s statements were true. Emmons Decl. ¶ 9; Emmons
17 Tr. 108:23–109:10.

18 **Response:** Disputed in part.

19 The claim is overbroad. As indicated in response to paragraph 84, it is
20 undisputed that Emmons believed some former UFCW leaders faced sexual
21 harassment accusations.

22 But, as further indicated in response to paragraph 84, Selvaggio and Emmons
23 did not discuss the accusations directed against Guenther, and Emmons knew no

1 facts that could reasonably support a belief that the Guenther-directed accusations
2 were true. The record evidence cited in response to paragraph 84 instead shows that
3 Emmons had not formulated a specific belief as to whether the accusations directed
4 against Guenther were true. And the record evidence cited in response to paragraph
5 83 further shows that Emmons did not care—or exercise the care—to learn the truth
6 of the accusation directed against Guenther; as soon as he heard there were
7 allegations contending former leaders of UFCW may be facing sexual harassment
8 claims, Emmons was prepared to spread those accusations to UFCW members
9 without investigating their truth and, in fact, deliberately avoiding the truth of the
10 accusations against Guenther.

11 **Defendants’ Reply:** Again, Guenther twists Emmons’s testimony in an
12 attempt to create a factual dispute, but there is none.

13 First, the evidence does not support Guenther’s assertion that “Selvaggio and
14 Emmons did not discuss the accusations directed against Guenther.” Both Selvaggio
15 and Emmons testified that they read the entire Flyer—including the accusations
16 concerning Guenther—and that Selvaggio stated the Flyer was true and supported
17 by investigations. ECF No. 123-3 at 8–9 (Selvaggio Tr. 110:9–111:22); ECF No.
18 112 ¶ 9; ECF No. 106 at 101–05 (Emmons Tr. 76:7–80:12); ECF No. 113-4 at 10–
19 11 (Emmons Tr. 108:19–109:10). Emmons testified he “can’t recall specifically”
20 whether Selvaggio mentioned “anything specific about the allegations regarding Ms.
21 Guenther.” ECF No. 106 at 97 (Emmons Tr. 71:23–25). Selvaggio testified he told
22 Emmons that the investigation “involved Ms. Guenther.” ECF No. 113-3 at 20
23 (Selvaggio Tr. 111:17-22).

1 Second, Guenther’s assertion that “Emmons knew no facts that could
2 reasonably support a belief that the Guenther-directed accusations were true” is
3 contrary to the record. Emmons knew the following facts: (i) Selvaggio stated the
4 Flyer’s statements were true and supported by investigations, ECF No. 112 ¶ 9; (ii)
5 Emmons had worked with Selvaggio for years, *id.* ¶ 5; (iii) in Emmons’s experience,
6 Selvaggio was “selective in the organizations and people he chooses to work for and
7 only works for those with high integrity,” *id.* ¶ 6; (iv) Emmons had also observed
8 Selvaggio “does not take on initiatives without first confirming that the position or
9 message he is communicating is a credible one.” *Id.*

10 Third, Emmons has consistently stated he believed the Flyer was true. *See*,
11 *e.g.*, *id.* ¶ 9; ECF No. 113-4 at 10–11 (Emmons Tr. 108:19–109:10). No evidence
12 shows otherwise.

13 Fourth, the record does not support Guenther’s assertion that Emmons “did
14 not care” about or “deliberately avoid[ed]” the truth either. *See, e.g.*, ECF No. 123-
15 3 at 8–9 (Selvaggio Tr. 110:9–111:2) (Emmons asked whether Flyer was accurate);
16 ECF No. 106 at 96–97 (Emmons Tr. 70:17–71:17) (same); ECF No. 112 ¶ 9 (same).
17 Although *Guenther* may think Emmons should have more thoroughly investigated
18 the Flyer’s statements, that does not change the fact that (i) Emmons did inquire
19 about the Flyer’s truth, (ii) based on Selvaggio’s response, Emmons believed the
20 Flyer was true, and (iii) Emmons had no reason to believe otherwise.

1 **V. Guenther's Role As UFCW 21 & UFCW 3000 President**

2 87. While UFCW 21 President, Guenther spoke at numerous press
3 conferences and was quoted in the media. DiLorenzo Decl. Ex. J at 5–6 (Resp. to
4 Interrog. 6); Guenther I Tr. 41:18–42:16, 45:7–46:1.

5 **Response:** It is undisputed that, from March 2020 through May 10, 2023,
6 Guenther spoke at four press conferences about COVID, two about crime in the
7 retail sector (which affects members' employment), two about the proposed
8 corporate merger between Kroger and Albertsons (a pair of grocery store
9 companies), one about legislation to address a health care staffing crisis, and one
10 about workforce development—a total of ten press conferences. ECF No. 113-10,
11 pp. 167–68. It is also undisputed that a podcast quoted Guenther regarding Local
12 21's pension plan, KUOW interviewed her regarding Seattle fish mongers and again
13 about grocery workers facing economic uncertainty, and King 5 quoted her
14 regarding the proposed Kroger/Albertson merger. *Id.* To the extent that these
15 fourteen events qualify as “numerous,” Guenther does not dispute the
16 characterization. To the extent Emmons asserts more than fourteen press
17 appearances or media quotations, Guenther disputes the assertion as unsupported
18 by the record evidence.

19 It is equally undisputed that Guenther gave no press conferences about the
20 potential union merger between Local 21 and 1439 and that no press—not a single
21 news outlet, podcast, or other broadcast media source—reported on that merger
22 before it became effective in March 2022. Dalmat 2nd Decl. ¶¶ 2–6 and Exs. 29–31
23 thereto; ECF No. 113-1 (Guenther Tr. I 41:18–42:16, 45:7–46:1). It is also

1 undisputed that Guenther and Local 21 did not seek press coverage of internal union
2 affairs and there is no evidence they could have garnered such coverage if they had
3 sought it. Guenther 2nd Decl. ¶ 21.

4 To the extent Emmons asserts otherwise, the cited record evidence does not
5 support the assertion.

6 **Defendants' Reply:** Guenther does not dispute that, while UFCW 21
7 President, she spoke at press conferences and was quoted in the media at least
8 fourteen times. She claims that these were her only media appearances, but that is
9 false. The record shows that she was quoted in the media at least ~~six~~ other times
10 during the relevant period. *See* ECF No. 10 ¶¶ 12–17; ECF Nos. 10-10, 10-11, 10-
11 12, 10-13, 10-14, 10-15; *compare* ECF No. 113-10 at 5–6 (Resp. to Interrog. 6).

12 The parties also do not dispute that Guenther did not discuss the merger in
13 any of these media appearances. But, for the reasons discussed in Defendants' reply
14 brief, that does not matter.

15 Finally, Guenther asserts that her repeated appearances in the media do not
16 show she could have accessed the media to discuss the merger or rebut the Flyer.
17 But that is a legal conclusion and not supported by the evidence. For example,
18 contrary to Guenther's counsel's representations, ECF No. 117 ¶¶ 2–6, the press *did*
19 report on the merger as soon as it was approved, demonstrating media interest in the
20 issue. *See* ECF No. 10-20 (article titled "Members of UFCW 1439 and 21 vote to
21 approve historic merger," published on February 15, 2022). The Court can and
22 should take judicial notice of this article and those cited above to "indicate what
23 was in the public realm at the time." *Von Saher v. Norton Simon Museum of Art at*

1 *Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (taking judicial notice of news articles
2 and other publications) (citation & internal quotation marks omitted); *Moussouris*
3 *v. Microsoft Corp.*, 2018 WL 3584701, at *9 (W.D. Wash. July 11, 2018) (blog
4 post).

5
6 **88.** The topics Guenther spoke about at these press conferences and in the
7 media included Covid masking and vaccines, Black Lives Matter, and workforce
8 development, among others. DiLorenzo Decl. Ex. J at 5–6 (Resp. to Interrog. 6);
9 Guenther I Tr. 41:18–42:16, 45:7–46:1.

10 **Response:** Undisputed. It is further undisputed that the topics at these press
11 conferences and in the media did not include the potential merger between Local 21
12 and Local 1439. ECF No. 113-10, pp. 167–68; ECF No. 113-1 (Guenther Tr. I
13 41:18–42:16, 45:7–46:1); Dalmat 2nd Decl. ¶¶ 2–6 and Exs. 29–31 thereto. It is also
14 undisputed that Guenther and Local 21 did not seek press coverage of internal union
15 affairs and there is no evidence they could have garnered such coverage if they had
16 sought it. Guenther 2nd Decl. ¶ 21.

17 **Defendants’ Reply:** Again, Guenther’s assertion that her repeated
18 appearances in the media on union-related topics do not show she could have
19 accessed the media to discuss the merger or rebut the Flyer is a legal conclusion.
20 And as discussed in Defendants’ reply brief, that is wrong. *See also supra* ¶ 87
21 (contrary to Guenther’s counsel’s representation, the press did cover the merger).
22
23

1 **89.** One of the UFCW 21 staff members Guenther supervised was
 2 responsible for UFCW 21's communications, and that person's duty was in part "to
 3 invite as many press people as they could" to UFCW 21 press conferences at which
 4 Guenther spoke. Guenther I Tr. 37:12–21, 40:11–42:13.

5 **Response:** Undisputed. It is equally undisputed that none of those invitations
 6 involved press conferences addressing the potential merger between Local 21 and
 7 Local 1439. ECF No. 113-10, pp. 167–68; ECF No. 113-1 (Guenther Tr. I 41:18–
 8 42:16, 45:7–46:1).

9 It is also undisputed that in 2021 through June 2022, Local 21/3000 did not
 10 attempt to garner press coverage on issues beyond COVID, Black Lives Matter, or
 11 specific bargaining situations. Guenther 2nd Decl. ¶ 21. In particular, Local 21 and
 12 Guenther did not attempt to garner press coverage of matters of internal affairs and
 13 no evidence suggests they could have achieved such coverage had they sought it.
 14 Guenther 2nd Decl. ¶ 21.

15 **Defendants' Reply:** Again, Guenther's assertion that her repeated
 16 appearances in the media on union-related topics do not show she could have
 17 accessed the media to discuss the merger or rebut the Flyer is a legal conclusion.
 18 And as discussed in Defendants' reply brief, that is wrong. *See also supra* ¶ 87
 19 (contrary to Guenther's counsel's representation, the press did cover the merger).
 20

21 **90.** Guenther has spoken at press conferences, given interviews, and
 22 appeared in the media at least seventeen times since January 1, 2019. DiLorenzo
 23 Decl. Ex. J at 4–6 (Resp. to Interrog. 6).

1 **Response:** Disputed.

2 The cited interrogatory asks for all speaking engagements and the answer
3 included telephone calls and a speech at a funeral. As a result, it is an overstatement
4 to say that Guenther spoke at press conferences, gave interviews, or appeared in the
5 media at least seventeen times since January 1, 2019.

6 As noted in response to Paragraph 87, Guenther attended ten press
7 conferences during that period and was quoted four times in the media, for a total
8 of fourteen appearances. In any event, none of the press conferences, press
9 interviews, or media appearances involved debate or discussion of the potential
10 merger between Local 21 and 1439. *See* response to Paragraph 87; ECF No. 113-
11 10, pp. 167–68.

12 **Defendants’ Reply:** Guenther does not dispute that she has spoken at press
13 conferences, given interviews, and appeared in the media fourteen times. She claims
14 that these were her only media appearances, but that is false. The record shows that
15 she was quoted in the media at least *six* other times during the relevant period. *See*
16 ECF No. 10 ¶¶ 12–17; ECF Nos. 10-10, 10-11, 10-12, 10-13, 10-14, 10-15; *compare*
17 ECF No. 113-10 at 5–6 (Resp. to Interrog. 6). The Court can and should take judicial
18 notice of these articles to “indicate what was in the public realm at the time.” *See*
19 *Von Saher*, 592 F.3d at 960 (citation & internal quotation marks omitted);
20 *Moussouris*, 2018 WL 3584701, at *9.

21 Moreover, in making the assertion in this paragraph, Defendants did not
22 include Guenther’s speech at a funeral or mere telephone calls. The cited
23 interrogatory sought “public” “speaking engagements.” ECF No. 113-10 at 5 (Resp.

1 to Interrog. 6). In her response, Guenther defined that term to mean “an event that
2 hosts a single speaker or panel of speakers that excludes routine private union
3 meetings,” and listed nineteen events that she deemed to qualify either as such a
4 “speaking engagement” or a media appearance or interview. *Id.* at 6–7. Defendants
5 then omitted the funeral speech and “Call regarding Labor 4 sustainability” from
6 their tally to arrive at seventeen. *See id.* at 6. In any event, the exact number of
7 public speaking engagements does not matter because, whether it was fourteen,
8 seventeen, or twenty-three, Guenther had far more media access than private figures.
9

10 **91.** As UFCW 21 President, Guenther communicated with members of
11 UFCW 21 “through Twitter, Instagram, e-mail, telephone, text message, podcast,
12 U.S. mail, Facebook, Facebook Messenger[,] and in-person.” DiLorenzo Decl. Ex.
13 J at 3 (Resp. to Interrog. 2).

14 **Response:** Undisputed.

15 It is equally undisputed that Guenther did not, with one exception, use any of
16 these media to communicate with Local 21 members regarding the potential merger
17 of Local 21 and 1439 before the merger went into effect on March 1, 2022. ECF
18 No. 107, ¶¶ 103, 107–13; and Ex. 18. The one exception is that, in her capacity as
19 President of Local 21, she directed the Local to send the January 6, 2022, formal
20 notice of the upcoming merger vote. ECF No. 107, ¶¶ 103, 107–13 and Ex. 18. That
21 notice did not mention or refer to Guenther and did not ask Local 21 members to
22 vote in favor of the merger. *Id.*
23

1 It is also undisputed that any individual can communicate with other
 2 individuals through Twitter, Instagram, email, telephone, text message, podcast,
 3 U.S. mail, Facebook, Facebook Messenger, or in-person.

4 **Defendants' Reply:** Defendants do not dispute the additional facts Guenther
 5 asserts in this paragraph.

6
 7 **92.** Guenther could send emails to all UFCW 21 members and transmitted
 8 annual notices on her letterhead. Guenther I Tr. 26:21–28:1.

9 **Response:** Undisputed that Guenther could send emails to all Local 21
 10 members and that Local 21 transmitted annual notices on its letterhead, which
 11 identified Guenther as Local 21's President.

12 It is equally undisputed that, between September 30, 2021, and March 1,
 13 2022, no such emails or annual notices discussed the potential merger of Local 21
 14 and 1439, let alone advocated for it. ECF No. 107, ¶¶ 103–114. In fact, the only
 15 notice that Local 21 sent regarding the merger was the January 6, 2022, formal
 16 notice of the upcoming merger vote—a notice that was not part of Local 21's annual
 17 notice. ECF No. 107, ¶¶ 103–07.

18 **Defendants' Reply:** Guenther's assertion that the January 6, 2022, letter was
 19 "the only notice" UFCW 21 sent to members regarding the merger is false. On
 20 December 17, 2021, UFCW 21 issued a press release on its website, titled "Building
 21 our power as the largest UFCW Local in the nation," that encouraged members to
 22 vote in favor of the merger. ECF No. 10-19; *see also*

23 <https://ufcw3000.org/news/2021/12/17/building-our-power-as-the-largest-ufcw->

1 [local-in-the-nation](#) (last accessed Nov. 14, 2024). The first line of the
2 announcement states in bold: “**On Tuesday, December 14, our member-led**
3 **executive board discussed and unanimously approved a Merger Agreement**
4 **between our Union, UFCW 21 and the members of UFCW 1439!**” *Id.* The
5 announcement further states that “both boards feel strongly that together we will
6 increase our ability to continue the fight for improved wages, working conditions
7 and benefits as well as improve our staffing, schedules and workplace safety.” *Id.*
8 And the announcement specifically told members they should approve the merger:
9 “Members will have the opportunity to vote *to approve this powerful merger* during
10 our upcoming in-person Winter General Membership Meetings in February 2022.”
11 *Id.* (emphasis added). The Court can and should take judicial notice of this press
12 release to “indicate what was in the public realm at the time.” *Von Saher*, 592 F.3d
13 at 960 (citation & internal quotation marks omitted); *Moussouris*, 2018 WL
14 3584701, at *9.

15
16 **93.** UFCW 21 sponsored vaccine clinics, and Guenther communicated
17 about these clinics to her roughly 44,000 members. Guenther I Tr. 37:22–38:9.

18 **Response:** Undisputed. It is equally undisputed that there is no evidence that
19 any discussion of the potential merger between Local 21 and Local 1439, or any
20 issue pertaining to internal union affairs, occurred at those vaccine clinics.

21 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
22 asserts in this paragraph. For the reasons discussed in Defendants’ Motion and
23 Reply, these facts are not material to the limited public figure analysis.

1 **94.** As UFCW 21 President, Guenther met with Governor Jay Inslee to
2 discuss Covid mask policies to keep the “lines of communications open.” Guenther
3 I Tr. 39:3–18, 47:24–48:12.

4 **Response:** Undisputed. It is equally undisputed that there is no evidence
5 Guenther discussed the potential merger between Local 21 and Local 1439 at any
6 meeting with Governor Inslee about COVID mask policies. *Cf.*, ECF No. 107, ¶¶
7 85–116.

8 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
9 asserts in this paragraph. For the reasons discussed in Defendants’ Motion and
10 Reply, these facts are not material to the limited public figure analysis.

11
12 **95.** As UFCW 21 President, Guenther communicated with other union
13 leaders, including negotiating a memorandum of understanding regarding “sick
14 leave protections” and getting other union chapters to sign on. Guenther I Tr. 46:20–
15 47:23.

16 **Response:** Undisputed. It is equally undisputed that the memorandum of
17 understanding referred to in this Paragraph had nothing to do with the potential
18 merger of Local 21 and Local 1439. Instead, it had addressed agreements between
19 UFCW local unions and Kroger and Albertsons. ECF No. 113-1 (Guenther Tr. I
20 47:8–15).

21 **Defendants’ Reply:** Defendants do not dispute the additional facts Guenther
22 asserts in this paragraph. For the reasons discussed in Defendants’ Motion and
23 Reply, these facts are not material to the limited public figure analysis.

1 **96.** Guenther was re-elected as UFCW 3000 President in 2023. Guenther I
2 Tr. 28:2–8.

3 **Response:** Undisputed.
4

5 **97.** Guenther ran for a position at UFCW International in 2023. Guenther I
6 Tr. 49:25–50:20, 52:17–21.

7 **Response:** Disputed in part. The cited testimony (along with additional
8 deposition testimony) explains that Guenther was seeking to run for a position with
9 the UFCW International and had submitted her name for consideration by sending
10 an email to the current President of the International, Marc Perrone, but was not
11 permitted to run because others at the International declined to nominate her or the
12 slate she was running with. *See* Dalmat 2nd Decl. Ex. 32 (Guenther Tr. I 49:25–
13 54:18).

14 **Defendants' Reply:** Defendants do not dispute the additional facts Guenther
15 asserts in this paragraph.
16

17 **98.** Guenther continues to make media appearances. Guenther I Tr.
18 126:18–127:1.

19 **Response:** Undisputed. It is equally undisputed that none of her media
20 appearances before or after May 10, 2023, discussed the merger or the questions at
21 issue in this lawsuit. *See* Dalmat 2nd Decl. Ex. 32 (Guenther Tr. I 126:18–128:3).
22
23

1 **Defendants’ Reply:** Defendants do not dispute the additional facts
2 Guenther asserts in this paragraph. For the reasons discussed in Defendants’ Motion
3 and Reply, these facts are not material to the limited public figure analysis.
4

5 **VI. Guenther’s Reputation**

6 **A. The Flyer Did Not Change Adam Jackson’s Opinion of Guenther.**

7 **99.** Adam Jackson was one of the individuals who helped draft and signed
8 the Complaint Letter concerning Renner. Jackson Tr. 25:23–26:8.

9 **Response:** Undisputed.
10

11 **100.** Before Adam Jackson saw the Flyer, his general impression of
12 Guenther was “[g]ood” because he had “only heard good things.” Jackson Tr.
13 127:14–21.

14 **Response:** Undisputed.
15

16 **101.** The Flyer did not change Jackson’s views about Guenther in any way.
17 Jackson Tr. 127:22–24.

18 **Response:** Undisputed.
19

20 **102.** Jackson has not heard anyone say the Flyer had changed their views of
21 Guenther. Jackson Tr. 127:25–128:13.

22 **Response:** Undisputed.
23

B. The Flyer Did Not Change Laurel Fish's Opinion of Guenther.

103. Laurel Fish was also one of the individuals who helped draft and signed the Complaint Letter concerning Renner. Fish Tr. 24:7–22.

Response: Undisputed.

104. Before Laurel Fish saw the Flyer, her opinion of Guenther was “[p]ositive.” Fish Tr. 95:16–18.

Response: Undisputed.

105. When asked if the Flyer changed that opinion, Fish said only that the Flyer “made [her] disappointed that [Renner] was going to continue to work for the Union.” Fish Tr. 95:19–21.

Response: Undisputed.

C. The Flyer Did Not Change Alex Garcia's Opinion of Guenther.

106. Alex Garcia previously worked with Renner at UFCW 1439. Garcia Tr. 15:11–24, 18:12–24.

Response: Undisputed.

107. Garcia was one of the individuals who signed a settlement agreement drafted by Aaron Streepy after Streepy's investigation into the Complaint Letter. Garcia Tr. 43:8–14, 102:22–103:16; ECF No. 51-1 at 7–8 (Bates stamps UFCW 3000 Resp - 006006–006007).

1 **Response:** Undisputed.

2
3 **108.** In Garcia’s “personal experience and professional experience,”
4 “Guenther has been not somebody with the utmost character.” Garcia Tr. 99:10–15.

5 **Response:** Undisputed.

6
7 **109.** The Flyer did not “in any way impact” Garcia’s view of Guenther.
8 Garcia Tr. 99:16–19.

9 **Response:** Undisputed.

10
11 **D. The Flyer Did Not Change Jeff Anderson’s Opinion of Guenther.**

12 **110.** Anderson testified that Guenther has a reputation “as a progressive
13 leader” and “a change agent,” and he has the same view of her. Anderson Tr. 121:21–
14 123:20.

15 **Response:** Undisputed.

16
17 **111.** The Flyer made Anderson “ask, think questions,” but it did not make
18 him think “less of [Guenther].” Anderson Tr. 86:9–12.

19 **Response:** Undisputed.

1 **VII. Lawsuit**

2 **112.** UFCW 3000's Executive Board authorized payment of Guenther's
3 legal fees for this lawsuit. Guenther I Tr. 122:1–6; DiLorenzo Decl. Ex. J at 3 (Resp.
4 to Interrog. 3).

5 **Response:** Undisputed.

6
7 **113.** On July 29, 2023, Guenther stated in an email to UFCW International
8 President Marc Perrone:

9 You urged caution in proceeding down the litigation path. I heard you,
10 and possibly to my detriment, have declined to broaden the scope of
litigation to include Local 555, Dan Clay, Michael Selvaggio

11 DiLorenzo Decl. ¶ 23 & Ex. V at 002090–91; Guenther II Tr. 88:20–89:8, 89:24–
12 90:14.

13 **Response:** Undisputed.

14
15 **114.** Guenther testified that she also did not sue Dan Clay and UFCW 555
16 because “the [UFCW] constitution requires that you have to go through an internal
17 process when there's conflict that's member to member before litigation” and “I
18 didn't have enough.” Guenther I Tr. 204:12–20.

19 **Response:** Undisputed but clarified that the discussion focuses on what
20 Guenther knew as of April 23, 2022—at a time when Clay was still denying his
21 involvement in the flyers. *See* Dalmat 2nd Decl. Ex. 32 (Guenther Tr. I 164:4–13,
22 203:4–10, 204:1–17); Ex. 33.

1 **Defendants' Reply:** Defendants do not dispute the additional facts Guenther
2 asserts in this paragraph.
3

4 **115.** On September 7, 2022, Emmons's counsel sent a request to Guenther's
5 counsel requesting under RCW 7.96.050 "all reasonably available information
6 material to the falsity of the statements your clients allege are defamatory or
7 otherwise actionable." ECF No. 48-2; DiLorenzo Decl. ¶ 27. Guenther has not
8 produced any information in response to this request. DiLorenzo Decl. ¶ 27.

9 **Response:** Disputed in part.

10 It is undisputed that Emmons's counsel sent an email dated September 7,
11 2022, to Guenther's counsel, citing RCW 7.96.050 and requesting "all reasonably
12 available information material to the falsity of the statements your clients allege are
13 defamatory or otherwise actionable."

14 It is disputed that Guenther has not produced all reasonably available
15 information material to the falsity of the statements she alleges are defamatory or
16 otherwise actionable. In fact, Guenther did so with the complaint itself, through her
17 initial disclosures and discovery responses, and through her multiple days of
18 deposition testimony. *See* Dalmat 2nd Decl. ¶¶ 7–8.

19 Nonetheless, it is undisputed that, by letter dated May 5, 2022, Guenther
20 requested Emmons take corrective action to rectify his defamation but, as of this
21 filing, Emmons has issued no correction or clarification of the statements his
22 published through his January 8, 2022, flyer circulation. Dalmat 2nd Decl. ¶ 9.
23

1 **Defendants’ Reply:** Guenther fails to identify any information she has
2 provided that would satisfy RCW 7.96.050. The statute allows defendants to request
3 “reasonably available information material to the falsity of the allegedly defamatory
4 or otherwise actionable statement” in response to a complaint alleging defamation.
5 See RCW 7.96.040(4), .050(1). A plaintiff who “unreasonably fails to disclose”
6 such information when requested cannot recover reputational and presumed
7 damages. RCW 7.96.050(2). The Complaint itself thus cannot satisfy Guenther’s
8 obligation to respond because it preceded Defendants’ RCW 7.96.050 request and
9 lacks any facts supporting Guenther’s allegations of falsity. See ECF No. 1-2.
10 Guenther’s Initial Disclosures do not qualify because they merely listed categories
11 of documents. ECF No. 48-3. And Guenther refused to produce those documents
12 until after the Court ordered her to do so—nine months after she identified them in
13 her Initial Disclosures and after Emmons had taken three depositions on Guenther’s
14 allegations concerning the Flyer’s Renner-related statements. See ECF No. 48 ¶¶ 7–
15 20, 30–31. Guenther’s deposition did not occur until May 13, 2024, (ECF No. 113-
16 1 at 2), over a year and a half after Emmons’s RCW 7.96.050 request. See ECF No.
17 113 ¶ 27 (RCW 7.96.050 request made on September 7, 2022). Thus, to the extent
18 anything in the Guenther’s document productions or testimony provided information
19 material to the Flyer’s alleged falsity—and Guenther has identified nothing—it was
20 untimely. Nothing prevented Guenther from providing the requested information
21 sooner.

1 As noted in Defendants' reply brief, the lack of a correction or clarification
2 does not relieve Guenther of her obligation to provide the requested information
3 under RCW 7.96.050.

4
5 DATED this 15th day of November, 2024.

6
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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2024, I caused the document to which this certificate is attached to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I declare under penalty of perjury that the foregoing is true and accurate.

DATED this 15th day of November, 2024.

By: s/Sara A. Fairchild
Sara A. Fairchild, WSBA #54419